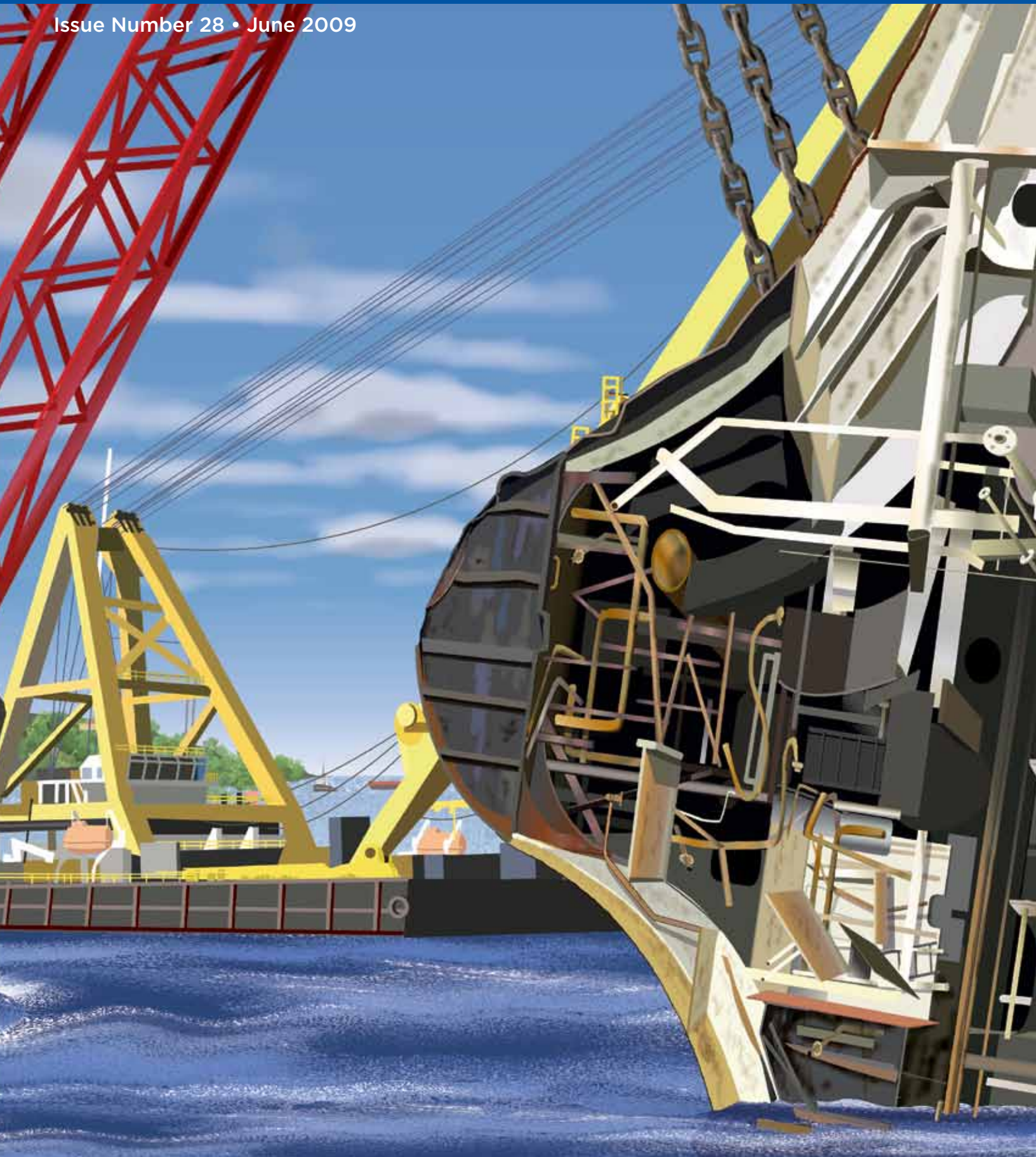


CURRENTS

Issue Number 28 • June 2009



CURRENTS

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MANAGEMENT CHANGES

THE FOLLOWING APPOINTMENTS HAVE BEEN MADE TO THE STAFF OF THE SHIPOWNERS CLAIMS BUREAU, INC., THE MANAGERS:

NEW YORK **KIM ABOOBAKER** IT Support Specialist
CECILIA CASADO Senior Staff Accountant
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INTRODUCTION

by: Joseph E.M. Hughes

Chairman & CEO

Shipowners Claims Bureau, Inc.

The introduction to *CURRENTS* No. 27 looked forward to the 2009 renewal season. The last edition also described the presentations entitled “Building on the Past, Welcoming the Future” which members of the management team had been making to the maritime community in various locations around the globe.

Their purpose was to describe the great changes which had taken place in recent years. The Club’s current status as a modern mutual with a global reach was explained. Looking to the future, the presentation sought to show how the Club aimed to add value to its Members’ business activity in the challenging economic times which lay ahead.

The presentations were well received, forming a useful platform from which the renewal of the Club’s business was conducted last February.

In the result, the Club enjoyed a satisfactory renewal season. Year-on-year premium increases of over 25% for P&I and nearly 29% for Defense cover were achieved. Looking forward, the historic loss ratios of renewed business imply that, for 2009, on the renewal rates obtained, an underwriting result better than break-even should be achieved.

As a follow-up to the efforts made toward the end of 2008, an updated form of the presentation will be made to Members and the Club’s other friends over the months ahead.

This will include Club results for the first quarter of the current calendar year, i.e. as of March 31, 2009. These look highly encouraging, although the development of the 2008 policy year—and more particularly, for obvious reasons, that of 2009—are still immature.

However, preliminary figures indicate a significant increase in the Club’s free reserves over the period from about \$36 million to nearly \$45 million, with a similar uplift in the Club’s free reserves per entered ton.

This has been stimulated by an improving trend in claims development for earlier years—notably 2007—and a very subdued result for the current policy year at present, although this is, of course, at a very early stage. Given the recent bounce in the equity markets, there are grounds for cautious optimism that further progress will be achieved over the medium term through increasing investment support.

In summary, the Club looks forward to further progress during the current policy year—with an eye, of course, to the financial difficulties which afflict the world economy in general.

However, its technical fundamentals are sound, its core business is performing well, legacy asbestosis problems have been resolved, its operational capabilities are second-to-none, as is its global reach, its investment portfolio is carefully balanced, and it has an excellent platform for future development.

While much has been achieved, much remains to be done and, overall, prudent growth is in prospect. The continuing success of the Club depends upon its Members and other friends in the market. All can be certain that it will continue to focus on the provision of unsurpassed service to all its customers in the fulfillment of its enduring mission!

FIGHTING THE SCOURGE OF PIRACY AT SEA

In spite of some signal successes by coalition naval forces in repelling or preventing attacks by Somali pirates in the Gulf of Aden and further south off the East African coast, one fact remains irrefutably clear: the problem is going to be around for a long time yet.

After all, Alexander the Great tried to wipe out piracy around 330 BC. However, piracy remained a major impediment to shipping in the Mediterranean two centuries later at the height of the Roman Empire.

Today, over 2,000 years later, one of the world's main trade arteries, used by around 20,000 ships a year, is the happy hunting ground for pirates who daily become more resourceful, audacious and violent.

A significant danger flag was hoisted mid-May when it was reported that an Indian seaman was shot dead by pirates on board the cargo ship *Sea Princess II* and his body thrown into the sea, and one of his colleagues was shot and injured, after a ransom had been paid. The ship was later released.

In 2007, a crew member of a Taiwanese-flag fishing vessel was murdered, apparently because the owner was reluctant to pay the ransom demanded.

Experts believe that a catalyst came in April when pirates failed to hijack the US-flag containership *MAERSK ALABAMA*, followed by a violent attack on another US-flag ship, a bulk carrier, possibly in retaliation for the deaths of three pirates in the successful operation to free Capt. Richard Phillips, the *MAERSK ALABAMA*'s master who offered himself as a hostage to ensure the safety of his crew.

It has been said that once a US-flag ship and crew were in the frame, a new ball game had begun; that may still remain true as events further unfold.

Some 16 nations at the last count—including Russia, China, Japan and South Korea—have warships in the region, which covers 1.1m square miles, a truly vast area that is difficult to police.

A big overarching problem is that when there is success and pirates are captured, whether from the failed state of Somalia or Yemen, no one seems to know what to do with them since there is no coherence or uniformity of law or instruction on the part of governments, flag states or ports. Like the crippled ship that is carrying oil or dangerous cargo, a port of refuge is hard to find.

Some pirates have been landed in Kenya and elsewhere, and a few have even appeared in French courts. In many cases, however, the captured pirates are released and within days, sometimes hours, they are again infesting the sea lanes.

The EU politicians in Brussels have said that prosecuting pirates remains a challenge as European navies operate under different rules of engagement. Also, it wants to ensure that pirates transferred to Kenya do not face the death penalty.

It has been reported that between August 27, 2008, and May this year, 320 suspected pirates were captured by coalition naval forces. Of that total, eight suspects were killed in firefights, but 175 were simply detained, disarmed and then released, according to Lloyd's List.

It seems that legal hurdles abound at every turn (as this was written it was revealed that half of all those arrested in the UK on suspicion of terrorist activity or links are released without charge). However, there is international consensus that what is happening at sea cannot be seen or tackled in isolation from what is taking place on land—political-speak for establishment of a stable Somali government for a start.

In January, the IMO-inspired Djibouti Code of Conduct, signed by 17 states, was introduced to solve the "East African problem" through co-operation, in a manner consistent with international law, to fight piracy. In practical terms, this means sharing intelligence, using piracy information centres in Mombasa, Dar es Salaam and Sana'a, intercepting suspected ships, supporting victims and prosecuting individuals attempting armed robbery at sea.

In May, Lloyd's threw its weight behind this initiative, and chairman Lord Levene urged global business to lend its clout to a pan-East African response to the scourge of piracy.

At the same time this pledge by Lloyd's was made, Spyros Polemis, chairman of the International Chamber of Shipping, told a security conference in London that "nations have a duty of zero tolerance to hijackers until piracy is completely eradicated with a political solution." There had been 100 reported attacks since last summer, he said, and the problem must be solved from onshore.

He also rebutted remarks from delegates that P&I clubs have been slow to deal with cases and are refusing to pay ransom money. "The clubs are not turning their backs," he asserted.

There has been no dearth of suggestions from other quarters on how to deal with this menace, which is hitting shipowners' pockets—payment of ransoms, increased crew costs, provision of security services and equipment, higher insurance costs, legal bills and ships' downtime—just at a time when they can least afford it.

For example, Nippon Foundation chairman Yohei Sasakawa's recent appeal for an international ocean peace-keeping naval force and a user-pays system of funding protection, on the back of existing international co-operation.

Drawing on the experience of the Malacca Strait and Singapore, where criminal activity has been significantly dampened, Mr Sasakawa pointed out that this was the result of international co-operation by the littoral states bordering the strait.

Earlier, Russian president Dmitry Medvedev suggested that an international court be set up to try alleged pirates. "It is necessary to consider all possibilities," he told Russian television.

Yet another idea came from Maersk Tankers chief executive Soren Skou who would like to see a secure corridor off eastern Somalia as a defensive measure against repeated pirate attacks. He also called on the international community to establish a transit corridor so that vessels can safely call at ports in Kenya and Tanzania.

Meanwhile, it remains debatable whether the combined naval forces in the area represent anything more than temporary relief. As Lloyd's List has commented in its leader column, "the availability of finance, political will and naval hardware to tackle piracy is not sustainable indefinitely. If a solution is to be found, it must be sooner rather than later."

Concerted efforts by the shipping industry and the task forces to at least contain the danger are not helped of course by the very nature of the problem. For the most part, no doubt following legal advice, shipowners are reluctant to divulge details of attacks and, especially, payment of ransoms.

After the release by hijackers on May 9 of the bulk carrier MALASPINA CASTLE and payment of a ransom, the London-based owner really spoke for all its peers with this statement: "We believe it would be irresponsible and imprudent to provide details of the ongoing dialogue with the hijackers over the course of this incident, or to release any details of the operational issues involved. Any such details provided in the public domain would, we believe, encourage would-be pirates and add further danger to the victims of such attacks. We hope and trust that the national and international media will respect this point of view."

The 32,600 dwt MALASPINA CASTLE (entered in the American Club, incidentally) had a crew of 16 Bulgarians, and there was speculation that the Bulgarian government had a hand in the ransom negotiations and payment. The ship's release after only about a month in captivity prompted a press comment that this "lends more weight to the theory that ransom demands are being met and ships freed more quickly than was the case last year or in the first quarter of this year."

In the meantime, the targeting of specific vessels continues to be mired in debate and often wild reports. In May a Spanish radio station reported that some pirate gangs have dedicated informants in the UK, Yemen, Dubai and the Suez Canal area, based on a European military intelligence document it had obtained.

This also suggested the pirates take into account the national flag of a vessel when deciding whether to attack, with gangs tending to avoid those flagged in the UK and other countries with strong naval forces. If this is to be believed, it might explain why most US-flag ships are also "overlooked" by the pirates.

Controversy also surrounds the burning question of whether ships should have armed guards on board or whether certain members of crew are trained to use firearms, over and above the various deterrent methods already employed, often with success it must be said.

(CONTINUES)



FIGHTING THE SCOURGE OF PIRACY AT SEA

It is known that some owners have opted for armed security men on board for part of the voyage, but of course it is not admitted. At one time there was universal condemnation of the idea of onboard armed guards or dropping 'squat' teams from above. But sentiment has shifted, hardened attitudes have softened, and it appears obvious that owners could be driven to such extreme tactics if the level of attacks does not soon subside or the violence escalates, despite the jungle of legal and insurance complications that would spring up.

At the end of April, AP-Moller Maersk, the Danish shipping giant, said it was flatly opposed to weapons on its ships. However, it was reported that live rounds from pistols on board helped drive off the pirates who attacked the cruise ship MSC MELODY.

But a downtick to these shenanigans occurred in November 2008 when the US-owned tanker BISCAGLIA was seized. She had on board three specially employed British security men. Although unarmed, they helped the crew in trying to prevent the pirates from boarding the tanker off Yemen. All kinds of devices and tactics were used but to no avail. The leader of the gung-ho British trio (two former marines and a former paratrooper) said afterwards that the pirates had no fear and ignored everything thrown at them during the half-hour attack.

Embarrassingly, the three 'guards' finally jumped over the side, to be picked up later by a German naval helicopter, leaving 28 Indian and Bangladeshi crew to their fate.

The marine insurance providers are in the thick of this mess, facing claims from many directions. A not inconsiderable expense if a ship is involved is the cost of repatriating crews when it is released by pirates.

As a final comment, and to mangle an old proverb, it seems to be a case of one man's poison is another man's meat. Many companies and entrepreneurs on the periphery are benefiting from piracy, such as private security contractors and other similar outfits which are either established or which have literally sprung up overnight. A leading security consultancy has said that some organisations charge between \$1m and \$1.5m to actually deliver the ransom money to a kidnap gang.

And it's all grist to the mill, of course, for maritime law firms and for loss and average adjusters, who are all closely involved.

In a New York court in May, a young Somalian was indicted on multiple piracy charges. Allegedly, he was the ringleader and sole survivor of the gang of four who attacked the Maersk Alabama in April. It is believed to be the first piracy case in the US for over a century.

A SEAFARER'S VIEWPOINT:

by: Captain Richard Gayton

Vice President and Principal Surveyor
Shipowners Claims Bureau, Inc., New York

It is fact that pirates and the act of piracy has been around since man first ventured out to sea. If one refers to a dictionary they will note that the term "piracy" maybe simplistically described as "robbery" and the "pirates" themselves, just as "thieves". However, when one looks at the related synonyms, one sees such words as "bootlegging", "buccaneering", "commandeering", "marauding" and "swashbuckling". These words would appear to conjure up a sort of romantic image of piracy. While the average person on the street may know at the back of their minds that piracy is wrong, I can't help feeling that their sympathy goes out to such pirates in general and that they associate such acts of piracy as being pure excitement and adventure on the high seas! During my seagoing career, I was occasionally asked to speak in front of audiences about various aspects of shipboard life and I was always surprised by the considerable interest in piracy and the intense questioning.

I suppose that this interest is a function of human nature and various film directors have cashed in on the romantic image of piracy over the years. By comparison the land-based thief seems to be a poor cousin that commands no interest at all. One can only smile at the charismatic and romantic image of Johnny Depp's character "Captain Jack Sparrow" in the *Pirates of the Caribbean* movie series swinging up over the bulwark, sword in hand!

In reality of course, the modern day pirate is no more romantic than the burglar breaking into your house to steal away your hard-earned valuables! He is a water-bourn predator out to make a profit by praying on the weak. His associated image is also dull in comparison to his Hollywood counterpart and he is simply clad in drab casual clothes, but more dangerously is invariably cowardly armed with automatic weapons of mass destructive force. This is simply not a character that wants to entertain you and one who should not be invited on board at all!

The frequency of pirate attacks off the coast of Somalia has recently risen drastically. Earlier this year, your Managers issued Club Circular 08/09, Piracy in the Gulf of Aden and off the Coast of Somalia: Best Management Practices for the Purpose of Detering Piracy. This circular was aimed at promulgating advice to our Members and Masters of vessels transiting the Gulf of Aden and Coast of Somalia and referred to the best practices that should be adopted, Group Transit System, International Authorities involved, procedures and reporting structure as recommended by the Maritime Security Center — Horn of Africa (MSCHOA).

A PRACTICAL APPROACH TO COUNTER PIRACY

Merchant vessels are traditionally not armed and although the services of armed guards can be contracted they are not recommended as defensive force could trigger a more determined deadlier attack. Experience learnt to date from the analysis of prior attacks identifies characteristic behavior patterns. Like predators of the wild, these pirates focus on the apparently unprotected vessels who are slow moving, low freeboard and unaware.

This is why transiting these danger areas whilst in convoy affords the best protection. However, these attacks are becoming far more wide spread and unfortunately military assistance in this area lacks common coordination which reduces its effectiveness. Commercial pressure therefore continues to encourage solo transits to be made. So how do Masters and crews defend themselves from attack in such cases? One of the key recommendations is to be vigilant.

- Double up bridge watches and post extra lookouts.

The types of assault craft being used are small lightweight fiberglass skiffs fitted with conventional, powerful outboard engines. Every bridge officer knows that this type of small fiberglass target is very hard to detect. Visually they tend to blend in with the surrounding environment invariably resulting in last-minute detection. Fiberglass is also transparent to the radar waves hence any target received this way will be very small and will often be confused in the sea and rain clutter. Most vessels' radar antennas are also positioned forward of the main mast which always produces a blind section dead astern. Radar detection of any craft in this sector is therefore highly improbable.

In my early days of marine surveying with the Salvage Association, I attended a racing yacht for a damage assessment. The yacht was being single-handedly operated and had unknowingly sailed straight into a freighter whilst the yachtsman was sleeping below. He had apparently thought that he was safe as he was operating a receiver designed to activate an alarm when detecting radar transmissions. Unfortunately in this case, the casualty occurred during morning twilight, during very clear weather conditions and the freighter in question had not chosen to operate her radar. As such the alarm remained silent, allowing the racing yacht to torpedo the freighter somewhere on the starboard quarter. I can only imagine the following surprise all round!

Our modern day pirates exploit these weaknesses by attacking from astern during conditions of reduced light.

- Pay particular attention astern and off the vessel's quarters during twilight and moonlit transits.
- Consider the use of night vision optics.

Make sure that any potential attacker knows that you are searching for their presence.

- Have search lights on and keep moving them in an arc across the vessels wake.
- Consider rigging and running fire hoses off the vessel's transom.

Reduce the closing speed of a potential attacker to the minimum possible. The faster container and ro-ro vessels always have the advantage here, especially with their higher freeboards.

- Maintain maximum seagoing speed.
- Consider a series of smaller alterations of course to port and starboard. This will create a choppy wake astern which will slow down the attacking vessel.

Also consideration should be given to the use of passive defense measures. There are a variety of non-lethal defensive measures commercially available. The merits of these devices should be assessed by the Member on the particular characteristics of the vessel concerned.

When piracy in the Malacca Straits became prevalent back in the late 1970's, I can always remember my own amusement at a second officer's comments who vowed to single handedly protect us all, by the use of home "Molotov Cocktails" lined up along the transom bulwark! Although hardly a passive defense, the thought of such a character literally "chucking" these homemade missiles at a "would be" attacker, is quite comedic!

In my experience, most seamen are not cousins of "Rambo" and would need little encouragement of adhering to the recommended practice of keeping ones head down.

If the pirates have gained access to the vessel, then crews have little choice but to retreat to a safe citadel, normally being the steering flat. However, any vessel has a fighting chance whilst the pirates are still in their boats and previous experience indicates that prior failed attempts of piracy have ended after 30-45 minutes of pursuit. Uses of vigilance, early detection, maneuvering and good communications are apparently the best tools at a Master's disposal for keeping would-be attackers at arms length.

IMO UPDATE HIGHLIGHTS

ON LIABILITY AND SECURITY

by: **Dr. William Moore**

Senior Vice President

Shipowners Claims Bureau, Inc. New York, USA



LIABILITY

IMO APPROVES DRAFT HNS PROTOCOL AIMED AT BRINGING 1996 HNS CONVENTION INTO EFFECT

The International Maritime Organization (IMO) approved a draft Protocol to the 1996 HNS Convention (the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea) at the Legal Committee that met from March 30 to April 3, 2009.

The draft Protocol is designed to address practical problems that have prevented many States from ratifying the original 1996 Convention. To date only 13 States have ratified the Convention and it is the hope that the Protocol will lead to the level of ratification that would trigger its entry into force.

The 1996 HNS Convention is based on the highly successful model of the Civil Liability (CLC) and Fund Conventions. Like the regime introduced by the latter Conventions, it seeks to establish a two-tier system for compensation to be paid in the event of accidents at sea, in this case involving hazardous and noxious substances, such as chemicals. Tier one will be covered by compulsory insurance taken out by shipowners who would be able to limit their liability. In those cases where the insurance does not cover an incident, or is insufficient to satisfy the claim, compensation shall be paid from

a fund, made up of contributions from the receivers of HNS. Contributions will be calculated according to the amount of HNS received in each State in the preceding calendar year.

However, among the obstacles that have discouraged ratification of the Convention, one of the most difficult to overcome has been the requirement for States to report the quantities of HNS received to IMO. This difficulty is due, in part, to the sheer range and diversity of hazardous and noxious substances that will be governed by the HNS Convention.

The reports act as a trigger mechanism for the entry into force of the Convention and the omission of States to file them has effectively prevented the Convention from becoming operative. The draft Protocol is set to address this problem, as well as others thought to be acting as barriers to ratification of the Convention.

The IMO Legal Committee has now requested the IMO Council to approve the holding of a diplomatic conference as early as possible during 2010 to consider the draft Protocol, with a view to formally adopting it.

Key Issues Being Addressed

It has been widely recognized that three issues have been instrumental in preventing States from ratifying the HNS Convention. The draft Protocol addresses each of them, as follows:

1. Problem: The difficulties in setting up the reporting system for packaged goods.

Solution: Packaged goods have been excluded from the definition of contributing cargo and, accordingly, receivers of these goods will not be liable for contributions to the HNS Fund. However, since incidents involving packaged goods will remain eligible for compensation, the shipowners' limits of liability for incidents involving packaged HNS will be increased. The precise level of increase will be set at the Diplomatic Conference.

2. Problem: Under the 1996 HNS Convention, the person liable for liquid natural gas (LNG) contributions is the person who held title to an LNG cargo immediately prior to its discharge. In the case of other accounts, the person liable is the receiver. While the receiver must be subject to the jurisdiction of a State Party, the titleholder need not be. It would, therefore, have been impossible to

enforce payment of contributions to the LNG account by titleholders in non-State Parties.

Solution: Except in the limited situation where the titleholder pays them, under the draft Protocol the receiver will be liable for annual contributions to the LNG account following an agreement to this effect with the receiver and the receiver has informed the State Party that such an agreement exists.

3. Problem: Despite an obligation to do so, very few States have submitted reports on contributing cargo after ratifying the Convention. This omission has been a contributing factor to the Convention not entering into force. In addition, there has been a growing awareness of the desirability of preventing the invidious situation which has occurred in the IOPC Funds, where non-submission of reports results in non-payment of contributions but not in withholding of compensation.

Solution: The draft Protocol deals with this in three ways:

- In order to ratify the draft Protocol, States will be required to submit reports on contributing cargo - IMO, as Depositary, will not accept any ratification which is not accompanied by such reports. States will also be obliged to continue to submit reports annually thereafter until the Protocol enters into force.
- Should a State fail to submit reports annually, after depositing its instrument of ratification, but prior to entry into force of the Protocol, it will be temporarily suspended from being a Contracting State. The Protocol will, therefore, not enter into force for any State which is in arrears with reports.
- Once the Protocol has entered into force for a State, compensation will be withheld, temporarily or permanently, in respect of that State, if it is in arrears with reports, except in the case of claims for personal injury and death.

SECURITY

PIRACY OFF SOMALIA

The problem of modern piracy, because of the various connotations it has in the case of Somalia, is difficult and complex and a holistic solution may not be easy to find before outstanding political differences are settled on land. Because the perpetrators of these unlawful acts behave with complete disrespect for civil society, unashamedly provoking the rule of law, there is a need to rise to the challenge, redoubling efforts and taking all the necessary measures to eradicate the scourge.

In November 2008, IMO Secretary-General Efthimios Mitropoulos briefed the United Nations Security Council (while it was considering the situation in Somalia in the context of the UN Secretary-General's regular report), placing particular emphasis on the three areas of concern to IMO relevant to the situation off Somalia and in the Gulf of Aden, namely:

- the protection of seafarers, fishermen and passengers on ships sailing in those troubled waters;
- the need to ensure the uninterrupted delivery of humanitarian aid to Somalia affected by ships chartered by the World Food Programme; and
- the need to preserve the integrity of transit through the Gulf of Aden.

On one hand, there have been some positive developments recently following intense activity in the United Nations Security Council leading to the deployment of naval assets and military aircraft belonging to certain political or defense alliances and several individual countries. However, the fact remains that, in the absence of adequate national laws, the arrest and prosecution of pirates remains extremely difficult.

IMO has also considered it both timely and appropriate to undertake a review of the legal situation, in particular with regard to the capture, arrest, prosecution and extradition of alleged offenders so that they

may not escape with impunity for their crimes. To this end, Circular Letter 2933 was issued in December 2008, requesting Member States to submit copies of their national legislation together with any pertinent information they may have about their domestic laws aiming at combating piracy and armed robbery against ships and prosecuting the perpetrators of such reprehensible acts. Responses have been received from a number of countries.

An ongoing activity of the Sub-Division for Legal Affairs of IMO, which is being conducted in consultation with the UN Office on Drugs and Crime and the UN Division for Ocean Affairs and the Law of the Sea, concerns the provision of legal advice on the application of the United Nations Convention on the Law of the Sea and the Suppression of Unlawful Acts treaty instruments, which are the overarching international legal instruments to combat piracy at sea.

In the context of Security Council resolution 1851, a Contact Group on Piracy off the Coast of Somalia was established, earlier in the year, with the principal mission of facilitating discussion and coordination of actions among States and organizations aimed at addressing the issue. The Group, which includes the IMO Secretariat, has agreed to establish four working groups, with Working Group Two addressing judicial aspects of piracy. In February 2009, the first meeting of two of the working groups — those addressing, respectively, military and operational coordination, including information sharing, and self-awareness and other capabilities of shipping — met here at the IMO Headquarters. Working Group Two met in early March in Vienna to discuss, specifically, legal issues; and the Contact Group as such held its second meeting in Cairo in the middle of March.

As a continuation from the last *CURRENTS*, where we highlighted the Claims Department team in New York, we will feature the Shipowners Claims Bureau (Hellas), Inc. in Piraeus. *CURRENTS* will feature the London and Shanghai claims personnel in the Fall 2009 issue of *CURRENTS* to be released.

MEET THE STAFF AT SHIPOWNERS CLAIMS BUREAU (HELLAS), INC. IN PIRAEUS

Ms. Victoria Liouta

MANAGER OF SCB (HELLAS), INC.

Having graduated from the University of Athens in law in 1991, Vicky Liouta gained her LLM degree in maritime law at the University of Southampton in the United Kingdom the following year.

She began her career in legal practice in the firm of Michael Minoudis, whose principal was concurrently Professor of Maritime Law at the University of Athens. She later entered the shipowning sector in the mid-1990s, taking up positions as in-house legal advisor to several leading companies including IMS SA, Project Shipping Inc. and Tomassos Brothers Inc.

In this capacity, Vicky gained the broadest range of experience handling charter party disputes, hull and P&I claims, personal injuries, arbitrations and a broad range of matters in litigation. In addition, she oversaw a wide variety of transactional activity of a legal nature within the companies in question, including loan agreements and other forms of shipping-related, commercial documentary arrangements.

Liouta joined SCB (Hellas) Inc. at its foundation in the early part of 2005 and participated closely in the expansion of its service capabilities in succeeding years. This entailed contact with the American Club's Members not only in Greece but also throughout the eastern Mediterranean region.

In 2008, Vicky took over operational responsibility for the local office on George Tsimis' return to New York to take up the position of global Head of Claims. In addition to her claims and legal advisory work, she has responsibility for the day-to-day operation of the office and its interface with the local shipping and legal community.

Ms. Liouta has been a member of WISTA (Hellas) since 2002 and in 2007 joined the governing body of the London Maritime Arbitrators' Association as a representative from Greece.

Dorothea Ioannou

DEPUTY CLAIMS MANAGER

Dorothea Ioannou has a B.A. from Queens College and obtained a Juris Doctorate from St. John's University School of Law in New York in 1996 after which she became and has since remained, a member of the New York State Bar Association. Dorothea is bilingual English-Greek and after relocating to Greece in 1997 she worked in local law firms dealing with cases involving European law, U.S. law, and general maritime law and was involved heavily in litigation ship arrest in connection with MOA disputes.

Dorothea entered the Marine Insurance Industry in 1998 when she joined the Piraeus Brokerage firm Allied Insurance Brokers Ltd. where she managed their Marine Insurance Claims Department and served as Legal Advisor for Insurance/Brokerage Matters until she joined SCB (Hellas) Inc. when the office opened in 2005 and was promoted to the position of Deputy Claims Manager in January 2008. During her career she has handled, advised on and directed the management of all types of claims relating to P&I/FD&D but also Strike, LOH, and H&M insurance policies.

Ms. Ioannou has also participated in several seminars as a speaker regarding the aspects of P&I/FD&D cover in general but also on the particular specialty area of collision cover. She has had significant and extensive exposure to a wide range of marine matters from straightforward crew, cargo and demurrage claims to major casualties involving collisions, pollution, total losses and explosions that not only involved complex legal and insurance issues but also impacted on and required the interaction and adjustment between several marine insurance covers.



Front: Konstantinos Korais. Rear (L-R): Despina Beveratou, Stavroula Leondara, Marivi Banou, Dorothea Ioannou, Peggy Lemou, Vicky Liouta, Myrto Anghelakis, Annie Papadimitriou.



Peggy Lemou

CLAIMS EXECUTIVE

Ms. Lemou worked with Richards Hogg Lindley, starting as an Executive Secretary to the General Manager and then became an Average Adjuster, having spent 2 years with the company in London and Liverpool as part of her training programme. Upon leaving Richards Hogg Lindley, she joined Associated Marine Adjusters for eight years until July 2006.

She gained and has vast experience on hull & machinery claims with particular fields of expertise in various aspects of cargo and hull & machinery specializing in a combination of particular average and general average, cargo claims, double general average claims, hypothetical salvage, collision/RDC and limitation, constructive total loss (CTL), hull underinsurance claims, cross and single liability claims, double insurance, and sacrifice & expenditure when assessing a CTL.

She joined SCB (Hellas), Inc. in October 2006 and primarily handles major cargo and collision claims as well as FD&D, personal injuries, illness and pollution claims. Peggy is a full member of the Association of Average Adjusters whilst she has commenced a post graduate diploma in Maritime Law with London Metropolitan University.

Despina Beveratou

CLAIMS EXECUTIVE

Ms. Beveratou is qualified with a BcS in Maritime Law after studies in Plymouth University in the United Kingdom. Since that time, she has obtained broad experience working within shipping companies in London and Athens while working in the operations department as well as in the ISM and crewing departments for three years. Prior to joining the Association, she worked for two years as in-house claims handler of all claims related to H&M, P&I and FD&D matters. Despina is multilingual speaks fluent Greek and English and good French and Spanish. She also enjoys music concerts, cinema, and travelling abroad.

Myrto Anghelakis

CLAIMS EXECUTIVE

To the benefit of our Members, Ms. Anghelakis is fluent in four languages, coming from a French educational environment; she pursued her academic career in France and studied law in Strasbourg.

Following graduation and with an interest for European affairs, she applied for a Master's to the College of Europe in Bruges, Belgium where Myrto further specialized in European politics and law and thereafter worked in Brussels at the European Parliament.

Following her experience in Brussels, she began qualification procedures in Greece and continued her legal training with a medium-size Greek law firm specializing mainly in civil and commercial law. Ms. Anghelakis became a full Member of the Athens Bar Association in 2005 and then took up a position of legal advisor with the Greek delegation to the Council of Europe in Strasbourg working mainly in the Human Rights field acquiring further knowledge on the functioning of the European microcosm/institutional mechanism.

She then returned to Greece and worked as a legal advisor in European law with a particular emphasis on European public procurement. Although with a global view on different fields of legal work, she always had a genuine interest for the maritime realm and decided to acquire the necessary academic/theoretic background and did a second Master's in Shipping Law and successfully concluded my LLM at UCL in London.

She joined SCB (Hellas), Inc. in March 2008.

(CONTINUES)

MEET THE PIRAEUS CLAIMS DEPARTMENT

CONTINUED FROM PAGE 11

Marivi Banou CLAIMS EXECUTIVE

Ms. Banou has been involved in the maritime business and worked in Piraeus for the last nine years beginning as a claims handler at the Piraeus based broker, Allied Insurance Brokers. Marivi was also previously employed at Tsakos Energy Navigation. She joined SCB (Hellas) in 2005 and is currently working as a Claims Executive working on P&I related matters including a full range of crew cases, stowaways and a wide range of cargo claims with emphasis on West African claims.

Marivi also graduated from BCA College in 2004 and obtained BSc Degree in Transport and Shipping.

Annie Papadimitriou CLAIM ASSISTANT

Ms. Papadimitriou obtained a Bachelor of Arts in Communications and Public Relations from the State University of New York's Empire State College. After obtaining her degree in 2004, she joined Tsakos Energy Navigation Ltd. for one year, where she worked in the bunkering department.

Annie joined SCB (Hellas), Inc. in May 2005 when the Piraeus office opened as an Administrative Assistant and was promoted in January 2008 to the position of Claims Assistant. She is responsible for organizing and coordinating precautionary cargo surveys requested by Members, as well as the standard pre-load surveys required for steel finished products.

Konstantinos Korais EXECUTIVE ADMINISTRATIVE ASSISTANT

Konstantinos previously worked for a major political party as an assistant to the party's Spokesman at the time and presently Minister of Education. He joined the Club in May 2008 and he is working as an Executive Administrative Assistant dealing with accounting and particularly invoices.

Konstantinos graduated from the Deree College of The American College of Greece in 2004 and obtained BSc in Business Administration with High Distinction, specialized in Shipping Management.

NEW CALIFORNIA REGULATIONS FOR USE OF LOW SULFUR FUEL BY VESSELS

by: Alan Nakazawa
Cogswell, Nakazawa & Chang LLP
Long Beach, California

Air pollution and emissions from ships is becoming an increasingly sensitive issue in California. There is considerably more publicity about the harmful effects of air pollution particularly in local port areas and this has caused state agencies and local port authorities to become proactive in trying to reduce air emissions from ships calling in California ports.

The California Air Resources Board ("CARB"), the California state agency responsible for air quality management within California, recently adopted new low sulfur fuel regulations for ships operating in and near California waters. The new regulations, once approved by the Office of Administrative Law which is considered a formality, will require ships to use low sulfur marine fuels to reduce emissions of particulate matter (i.e. nitrogen oxides and sulfur oxides) from their main propulsion diesel engines, auxiliary diesel engines and auxiliary boilers within California internal waters and within 24 nautical miles of the California coastline. As of January 1, 2009, ships are required to use marine diesel oil with 0.5 percent or less sulfur or marine gas oil with no more than 1.5 percent sulfur. On January 1, 2012, the level of sulfur will be reduced to 0.1 percent or less for both marine diesel oil and marine gas oil. The new regulations apply to any person (defined to include any person, firm, partnership, corporation, or company) that owns, operates or charters any ocean-going vessel that operates in regulated California waters.

The new regulations also include record keeping and notification requirements. The new record keeping requirements include documenting in English any entry and departure from regulated California waters, any fuel switching procedures and the amount and actual percent by weight sulfur content of all fuels purchased for use on board a vessel. The regulations require a vessel unable to comply with the low sulfur fuel requirements to notify the state before entry into regulated California waters, and to make the ships records available upon request of the state's executive officer.

Ships failing to comply with the new regulations will be subject to a noncompliance fee of USD\$45,500 on the first port visit, with increases for any subsequent noncompliance port visits, up to USD\$227,500 for the fifth or more noncompliance port visit. CARB estimates that a typical cargo ship will incur an additional expense of approximately USD\$30,000 for the low sulfur fuel on each port visit.

On January 1, 2007, CARB began enforcing the "Marine Diesel Rules" regulating emissions from auxiliary diesel engines on ocean-going vessels within 24 nautical miles of the California coast. These regulations were successfully

challenged in court by the Pacific Merchant Shipping Association (“PMSA”), an industry association made up of owners and operators of vessels, on the grounds the Marine Diesel Rules were preempted by the Federal Clean Air Act Amendments of 1990 and required that California first obtain a waiver from the Federal Environmental Protection Agency before implementing its own standards for emissions from ocean-going vessels. PMSA also argued that the authority to regulate beyond the state’s three mile limit is restricted to the Federal Government and that the regulation of emissions from ocean-going vessels should be accomplished through international regulations such as the MARPOL annex VI regulations being considered for adoption by IMO. The District Court decision enjoining enforcement of the Marine Diesel Rules was affirmed by

the Ninth Circuit on February 27, 2008. In response to this court decision, CARB enacted the new low sulfur use regulations discussed above and have argued that the new regulations set out operational fuel use requirements, not emission standards, and therefore do not require Federal approval. It is uncertain whether the PMSA will make a legal challenge to the new regulations.

To encourage the use of cleaner low sulfur fuels, the Ports of Los Angeles and Long Beach have adopted a voluntary “Clean Marine Vessel Fuel Incentive Plan” whereby the Ports will pay the incremental difference between the higher cost low sulfur fuel and bunker fuel for vessels that switch over to 0.2 percent low sulfur fuel in their main engines within at least 20 nautical miles and up to 40 nautical miles from Port Fermin. To qualify for the program, ships must also burn low sulfur fuel in their auxiliary engines while at berth and participate in the Ports’ speed reduction program. Ships must enroll in the program to be eligible for the reimbursement. The voluntary incentive program commenced on July 1, 2008 and reportedly has over 120 vessels subscribed.

There are additional regulations that may soon be enforced by California authorities that will impact ships calling in California ports. CARB recently adopted two new measures to reduce emissions from ships and trucks operating in the major ports of the state. These two new measures may go into effect in mid-2009. The first measure requires operators of certain types of ocean-going vessels (i.e. container, passenger and reefer vessels) to shut down their diesel auxiliary engines while at berth and to use shore-based electrical power (i.e. cold-ironing). CARB is expected to introduce cold-ironing measures for bulk ships, tankers and vehicle carriers next year. The second measure requires all drayage trucks in use at the ports in California to meet 2007 engine standards by 2014.



VESSEL LAY-UPS: A SURVEYOR'S PERSPECTIVE

by: **John Vickers** Principal Surveyor
BMT Marine & Offshore Surveys, New York

Lay-ups are becoming more common place and for some of us, as the great New York Yankees catcher Yogi Berra used to say: "this is like déjà vu all over again."

During the early 1980s many vessels worldwide were laid up, with a significant number being in the temperate, fairly protected, and often deep, waters of the Norwegian fjords. These were mostly tankers and large bulk carriers and one large raft of brand new LNG carriers.

The preliminary requirement of a high value lay-up was a weather synopsis with a wind rose indicating wind speeds that may be expected from any direction, together with temperatures for a 12-month period. Tidal and current input, if any, should be included. Practical other issues are traffic, obstructions, pipelines cables, etc. I once boarded a laid up super tanker in a fjord with a large rock about 70 feet from amidships, so attention to detail and a large scale hydrographic chart are required.

Once wind and current loads that may be anticipated on a moored vessel were established, then a mooring plan could be prepared. This would usually involve a large single point bollard being installed ashore to a certain working load and the usual criteria being used to establish the holding power of the two anchors astern.

With the stern fastened to the shore bollard either by a heavy chain or mooring wires, and both anchors laid out, the vessel could be moored safely for the lay-up period. Chain could be used depending on what in months or years may be expected for the period of lay-up.

There have also been rafts commencing with two vessels on anchor bow to stern, this raft being increased in size with additional vessels with their anchors laid out. It helps if there is an even number of vessels at a similar draft and of similar characteristics. The size of the raft depends on local conditions. Breaking a vessel out can be an interesting exercise and the uniformity of the raft is lost. Purpose installed buoys and moorings can lead to large laid-up fleets as in the James River Reserve Fleet.

Lay-ups alongside were mostly for single vessels. A number of passenger ships have been laid up alongside in the Bahamas, many older and not all returned to trade. The timing of these lay-ups has been more to do with the cruise industry and not the general reduction in trade now being experienced.

Recent years showed stellar rates for bulk carriers and tankers with a huge new building program. The downside is inevitably with us today and a lot of vessel will now inevitably go to lay-up. The mega container vessels are finding over capacity after large new building programs. Just a matter of months ago, the talk was charter speeds being reduced to save fuel. However, while fuel prices may have moderated, capacity is only reduced by lay-up.

Some underwriters' warranties call for approval of mooring arrangements. These warranties would generally be limited to the moorings and the firefighting arrangements. An approval of lay-up arrangements would cover moorings and firefighting with the addition of machinery preservation. The purpose of these surveys was to allow a return of premium.

A large raft could consist of five large vessels; there was at the time supposed to be a cost limit on the total in one raft. This was probably exceeded, at least briefly, in the 5 Tenager LNG vessels in Stavanger, Norway. Different from vessels being taken out of service, these were vessels newly built in Dunkirk which, after sea trials, went directly to Stavanger for lay-up, waiting for the LNG terminals to go into operation. Reportedly the vessels were about USD\$200 million each.

Fire fighting may be in part provided by a lay-up crew as well as by shore-based fire services. The stern to mooring system does not lead to easy access for shore-based personnel in an emergency. While removing personnel completely would tend to minimize fire risk, there is usually a requirement for personnel for routine requirements of lay-up maintenance as well as firefighting.

In some cases an arrangement may be made where one lay-up crew could look after a raft of five vessels. An isolated crew quartered on one vessel, with the other vessels only visited as required for an inspection, can be a desirable system.

Machinery preservation may include the movement of all rotating machinery at monthly intervals. Dehumidification (colder temperatures generally give lower relative humidity, another bonus for high latitude temperatures if not freezing). Also, consideration should be given to heating, if necessary, to keep temperatures above freezing.



Testing of lubricating oils at regular intervals and Meggar testing of electrical circuits should be part of a comprehensive lay-up program.

If a boiler is laid up wet again there should be regular analysis of the water and manufacturer's guidelines should be followed for additives. When boilers and condensers are under dry preservation, they may be opened up to allow for the circulation of dehumidified air and insertion of heat elements.

The engine room, upper and lower, may be sealed to allow the entire space to be dehumidified and heated. Heating should be only sufficient to prevent freezing.

Cathodic protection on a raft of large vessels if they are in deep lay-up can be an issue for expert input. Impressed current systems with multiple vessels may have unusual affects between vessels. Conventional anodes are sometimes suspended around the vessels below water level to afford protection or replace anodes known to be wasted or due for renewal. The impressed current systems may be switched off, though.

Accommodation, galleys, public rooms, etc, should be cleaned and left opened up internally to allow for the circulation of dehumidified air, port covers, etc, to be closed to minimize sun damage. The accommodation block as a whole should be closed up to prevent unauthorized access.

Tankers should be cleaned and inerted. LNG cargo tanks require special attention, water ballast tanks should at a minimum have their condition monitored and be either full or empty.

All stack exhaust openings should be capped. A laker laid up for three years was recently reactivated and found all three generators full of water and seized up for lack of exhaust caps.

The longest lay-up of high value vessels was probably the three El Paso LNG vessels. These were US built around 1978 and some time after laid up in Newport, Rhode Island at Derektor's shipyard, before moving across the Narragansett to the carrier pier at Quonset. In 1994 two of them were purchased and moved down to a new mooring near the James River reserve fleet on the Chesapeake and laid up yet again. The third runs LNG to Boston from Trinidad. They spent most of their lives laid up, going to refit and then returned to trade around 2000.

Smaller vessels and lower values get lesser time and attention as one may expect. Tying up to a dock in the US Gulf may bring cries of indignation when it comes to hurricane preparedness arrangements.

The CORRAGIO, one of the world's largest tankers, certainly the largest vessel under the Italian flag at that time, laid to a single anchor off Little Cayman for a

number of years before firing up her boilers and steaming off to India.

A lot has changed since the 1980s, where these surveys were carried out in the past for hull and machinery interests with OPA 90 and other legislation, the Clubs may have more exposure with laid up vessels and wish to be included in these surveys.

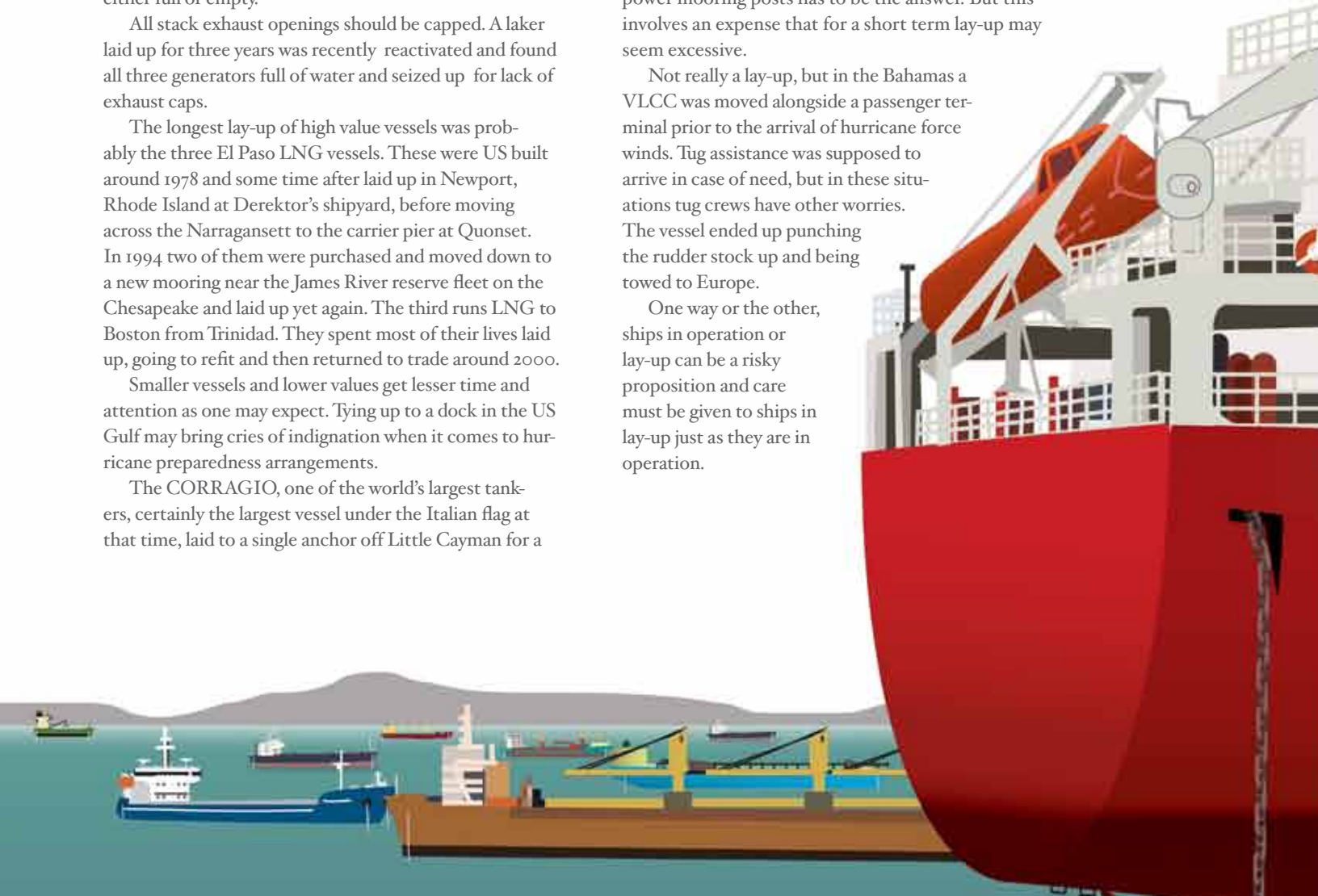
Large high-value vessels tend to have management of a commensurate capability, but not always. Vessels which have been taken over by banks and mortgage holder, may have a time period when management and crewing is in a state of flux. Smaller low-value vessels may still have significant exposure for their Clubs if laid up to a low standard with minimal management and fuel or slops on board, especially in a hurricane area where the obvious dangers come around all too quickly. Often the short hot lay-up may become a longer term proposition with little notice.

So what else can go wrong? A large LNG carrier laid up alongside in the Delaware recently broke free in a wind storm. Fortunately she ended up on a nearby shoal area and not alongside the major highway bridge nearby. She was laid up taking into account all the breaking strains of her lines, expected wind speeds and on her huge sail area, but that type of calculation makes assumptions that all parts bear an even strain, and in practice it is clear that they do not. Large chain with purpose designed and installed high holding power mooring posts has to be the answer. But this involves an expense that for a short term lay-up may seem excessive.

Not really a lay-up, but in the Bahamas a VLCC was moved alongside a passenger terminal prior to the arrival of hurricane force winds. Tug assistance was supposed to arrive in case of need, but in these situations tug crews have other worries. The vessel ended up punching the rudder stock up and being towed to Europe.

One way or the other, ships in operation or lay-up can be a risky proposition and care must be given to ships in lay-up just as they are in operation.

John Vickers joined The Salvage Association in London in 1981 as a Nautical Surveyor after service at sea and in the offshore industry. In 1983 he was transferred to New York, and has been here ever since traveling from the North Slope to the Beagle Channel for casualty, salvage and marine warranty surveys. This article is a reminiscence of his own personal experience and does not offer guidelines for Owners, rather a general view for those with exposure to the risks that may be encountered.





DRUGS IN THE CARIBBEAN

Question: What is the connection between Barbados and the U.S.A.? Answer: sea transport.

The same can be said of all the Caribbean islands. Looking at a map of the Caribbean, the island chain forms a line of stepping stones linking South America with North America, Venezuela with Miami, a “sea-bridge” equivalent to the Central American “land-bridge”. Heightened publicity surrounds the current Mexican drug wars for control of the lucrative trade across the Rio Grande, Hillary Clinton admits that these are fuelled by demand in the U.S., and there is an alternative, easterly trade route through the Caribbean Islands. How is this being used by the traffickers, and how is the situation addressed by the authorities?

The principal drugs flowing through the Caribbean chain are cocaine and marijuana. The cocaine in the region originates exclusively from mainland South America. Marijuana is grown widely in the region, but on a commercial scale only in the islands of Jamaica and St. Vincent, and again mainland South America. These are the starting points for the trade.

The smugglers’ objective is to transport the drugs from the production areas to the consumer areas, maximizing unimpeded delivery. There are only two options in



by: **Rupert Steer**

Cariconsult International Limited
Barbados

the Caribbean: air transport, and sea transport, and this article concentrates on the latter. Necessarily, cargoes from known production areas attract the greatest scrutiny. Direct shipments from Colombia to the U.S.A. have been intercepted in submarines, dedicated service vessels, and attached to the hulls of innocent cargo ships. These are high volume trades that tend not to touch the smaller islands of the Caribbean, but low volume trades are common throughout the region. Step one frequently sees the contraband transported by the shortest available sea journey away from the producer country, and there are a number of options available. The Dutch ‘ABC’ islands — Aruba, Bonaire and Curacao — are a short speedboat ride from the coast of Venezuela. The second language of the islands is Spanish. Enforcement (or otherwise) of drug laws is not as in Holland, but attitudes are not so different: some years ago a Curacao newspaper reported that marijuana had been smuggled into the local prison, and the perpetrator identified, with the result that he would not be allowed back into the prison!

Fans of World of Warcraft will be interested to learn that the shortest route from Venezuela to Trinidad is across either the Serpent’s Mouth, or the Dragon’s Mouth, but either way, it is a short crossing. In a booklet entitled, *Cocaine and the Economy of Crime in Trinidad and Tobago*, Daurius Figueira writes: “Rumors abound on a daily basis of the linkages between drug barons, politicians, the police and the legal system, and rumors are based on perceptions.” Of the Caribbean islands, those that feature most frequently in relation to the export of drugs are Trinidad and Curacao as transit points and Jamaica both as a producer of marijuana and a transit point for cocaine. But where are the drugs going?

Interdiction efforts in the islands tend to show a convoluted pattern of movement, rather than direct transportation from the first stopover point to the consumer markets of Europe and the U.S.A. A number of ship operators run liner services through the islands, following advertised routes. The implication of finds in the islands suggests that drugs are moved into a liner routing, and so transported further from the producer country, before being placed with a final carrier to the end-user destination. This should not be viewed as the exclusive routing, but rather as the particular routing that is most evident in the islands themselves. The drugs next show up at intermediate ports: the Bahamas, Barbados, Dominican Republic, Haiti, Martinique, Saint Maarten, with regular onward connections to mainland U.S.A. and Europe.

What is the response in the islands? While there are efforts to create uniform policy, much of it supported by the U.S.A. or Europe, the approaches of the different islands vary widely. Vessel searches are becoming more frequent. There have been complaints from Masters that

these are intimidating, involving automatic weapons and dog teams. Searches often do not result in drugs being found, but they are commonly based on intelligence shared by the authorities of the different jurisdictions. If a vessel is subject to searches at consecutive ports this is a strong indication that the authorities are acting on a tip-off, and later searches often reveal contraband missed the first time around.

In most jurisdictions the response of the authorities to a declaration of drugs, or discovery as a result of a search, tends to be similar: the Master, and any crew member who may have played a role in the affair (for example a crew member who found and reported the drugs) will usually be taken to the police station and questioned. Police procedures vary between jurisdictions: a detainee in one of the islands following the English legal system is likely to be entitled to legal representation throughout a police interview; in the French West Indies a person may be questioned for up to 96 hours with no lawyer present. In Barbados the Master may expect to be detained for up to 8 hours for questioning, and then (in the absence of personally incriminating factors) released without charge.

In Trinidad the Master will be prosecuted regardless of indications of personal involvement, a process which usually takes up to 3 months, and on conviction attracts a fine relative to the value of the drugs seized. In a case in which a Master pleaded guilty for technical reasons, even though there was no possibility of personal culpability, the fine imposed was close to US\$500,000. The process is, however, conducted fairly, and this office has secured acquittals in every contested prosecution. An alternative approach may be found, for example, in St. Kitts, where a Master who declared cocaine was advised by the authorities to keep it in the ship's safe and declare it at his next port of call. The Kittitian customs were eventually persuaded to take the drugs.

The mode of concealment adopted on inter-island traffic apparently varies with the type of drug (although again this is only deduced from drugs which have been found). Cocaine is most commonly secreted in crew or cargo areas, inside the ship; marijuana is most commonly found in canisters attached to the bow-thruster grilles. While drug canisters have been found in the rudder stock, bow-thruster grilles appear to be preferred as access is always possible below the water line, and the grilles allow for easy attachment. Facts of a recent case pointed towards attachment taking place while a vessel was at anchor off Port-of-Spain, Trinidad, while the vessel was under 24-hour customs surveillance.

Avoiding drugs coming on board is rather like avoiding stowaways (and sometimes the two go together). They both require constant vigilance both in port and at anchor.



A canister carrying marijuana that was bolted to the outside of the ship.



Bags of marijuana seized aboard ship.

With this in mind, shipowners should consider the following when trading in the area:

- (a) Consider vessel routing: if your vessel is performing a service taking it through drug loading places such as Jamaica, Aruba, Curacao, Guyana, and Trinidad, and on to drug trans-shipment regions such as the Bahamas, Barbados, Dominican Republic, Haiti, Martinique, and Saint Maarten, then be aware that your vessel is likely to be targeted by drug traffickers. Be alert to any indications, such as: recurrent searches by authorities; bow-thruster malfunction; unauthorized personnel on board;
- (b) Underwater hull survey prior to leaving port: currently this office recommends underwater survey on departure from ports in Jamaica, Curacao, and Trinidad, as well as at the last port of call prior to calling Trinidad, and particular vigilance in Guyana;
- (c) Personnel monitoring: maintain an active drug testing program for crew members, and keep this fully documented; maintain stowaway security measures; watch stevedores and other visitors to the vessel; as far as practicable watch for visitors below, as well as above, the waterline.

If, in spite of the best precautions, trouble strikes, obtain the best representation from the outset: the minute a search party boards a vessel. All too easily a Master can cost his owners delays and fines of hundreds of thousands of dollars for the sake of a few hundred dollars in representation. A careless remark can multiply the eventual cost, and result in the Master's career being foreshortened by conviction as a drug trafficker. In Guyana a vessel was detained for several months, and the cargo seized and sold on the basis of alleged drugs found on board which were never tested, nor made available in court. Trinidad courts are handing out fines in the region of US\$500,000 to Masters of vessels found with drugs on board, whether above or below the waterline. There is no substitute for experience in the defence of ship masters prosecuted as a result of their position rather than personal involvement.

The summer months in the United States and Canada bring about concerns regarding infestation from ships inadvertently carrying the Asian gypsy moth. U.S. and Canadian officials are actively intercepting infested vessels and advise Members take preventative measures as appropriate.

We would also like to bring to attention the website www.asiangypsymoth.org. This website was created as a resource to help prevent the movement of the Asian gypsy moth in international trade by providing the latest information available.

THE ASIAN GYPSY MOTH INFESTATION SEASON IS UPON US



by: Michael Simon

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United States Department of Agriculture
New York

& Nancy Kummen

Forestry Specialist, Plant Protection Division
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United States and Canadian authorities have intercepted live Asian gypsy moth (AGM) egg masses on an unprecedented number of commercial vessels calling on west coast ports in 2008. This number has not been experienced since the early 1990s. Ten of these events were severe enough to consider vessels significantly infested resulting in the vessels being ordered into international waters. In all cases, delays in cargo loading and in routine clearance were significant. This has resulted in the loss of revenue, as the vessels were unable to conduct cargo operations, missed cargo charters, and have experienced significant schedule delays. These incidents can be avoided by adherence to strict sanitation standards involving the removal and destruction of all AGM egg masses prior to port arrival in the United States and Canada.

This situation is a very serious pest concern that could result in widespread pest infestations in U.S. and Canadian forests in a relatively short time. These recent events are leading U.S. and Canadian officials to believe that AGM populations in seaport areas in Japan and other parts of northeast Asia have risen dramatically and will continue into 2009. It is imperative that industry representatives collaborate with the United States and Canadian authorities on measures closely to reduce these incidents as soon as possible.

Both Canada and the US are aware that the shipping industry is interested in quarantine compliance and maintaining schedules. Both countries are committed to working with industry to support measures that will reduce AGM risk at origin.

Reports of swarms of moths at various ports in Japan and elsewhere where AGM exists have been received. Moth flight occurs especially during night operations for cargo loading and unloading. Bright lights attract the gypsy moths to the vessels. The periods of risk for Asian gypsy



Eggs can be found in places you won't necessarily see onboard ship.



Eggs are found almost anywhere aboard...



...they are found on howser rope and...



...inside and outside of cargo holds.



Egg stage of the Asian gypsy moth.



Larvae stage of the Asian gypsy moth.



Pupa stage of the Asian gypsy moth.



Adult stage of the Asian gypsy moth.

moth flight and infestation range from June 1–August 15 in southern Japan to July 15–October 1 in northern Japan and far east Russia. China and Korea have similar flight periods of risk.

U.S. and Canadian officials share the belief that a major AGM population spike may be occurring in Japan and China, as Russia has experienced the past two years. We also suspect that this may be occurring in Korea and China. Populations of gypsy moth worldwide are known to spike almost simultaneously, within 1–2 years of each other. Populations then decline for a couple of years before later collapsing.

U.S. and Canadian officials seek increased collaboration with shipping lines, agents, and associations in order to try to minimize these events with support of port monitoring and vessel pre-inspection techniques.

It will be necessary for shipping lines to order all vessel crews to conduct intensive vessel inspection to remove (scrape off) and destroy all egg masses prior to entering U.S. and Canadian ports. The egg masses can be found anywhere on the vessel superstructure and anywhere that doors were open while in port. Locations include barrel containers used for trash or liquid.

Egg masses may also found on the lines used to moor the vessel to the dock, extra lines laying on the deck, very high on the vessel super structure, on air intake vents, vessel smoke stack, on the tracks used for crane movement, on the outside hull, on a container stored on the deck, and inside a wheel/tool house or room on the aft deck. The egg masses will also be seen throughout the vessel meaning on the aft deck, starboard and port sides of the deck and housing, on the bow, and on the main deck and upper decks of the main super structure, cargo hold framing, and other vessel framing including safety rails. The outside of containers must also be inspected.

In significant infestations in 2008, US Customs and Border Protection (CBP) inspectors have detained vessels with 50 to over 100 live viable egg masses located throughout the ship. Each egg mass can contain several hundred eggs. Please note that this includes bulk cargo, grain and container vessels, as well as fishing vessels and cruise ships. Vessels found infested by US or Canadian authorities are not authorized to load or unload cargo until they are free of AGM life stages (egg masses, live larvae, and live adults).

Due to North American coordination to prevent entry of this pest, vessels are informed that they cannot redirect to Canada or Mexico, but can choose to proceed to other foreign locations.

United States Department of Agriculture (USDA) and Canadian Food Inspection Agency (CFIA) officials are not recommending avoidance of any foreign port. However, due to these extreme conditions, we are recommending that vessels transiting in far east Russia and Japan during designated periods maintain compliance by obtaining certification prior to departure from these countries. In addition, all vessels calling on China and Korea must insist on high levels of vigilance and self inspection to ensure that no egg masses remain on board the vessel when it arrives in the US and Canada. The consequences of inadequate preparation are very high.

The purpose of this message is to warn maritime shippers that we have an emerging problem. Please disseminate this information to your membership. Thank you for your help in providing information to the shipping industry. USDA and CFIA officials will work with industry to produce information on AGM specific to vessel sanitation to support collaboration and minimize vessel clearance time at US and Canadian maritime ports.

Please contact the officials listed below for further information or questions.

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by: Mr. Arnold Witte

Don Jon Marine Co., Inc.,
& President, International Salvage Union
& Chairman, The American Club

ELEVATING COSTS OF CASUALTY RESPONSE

Since being extended the privilege of becoming Chairman of the Board of Directors of The American Club, I have witnessed the rapidly accelerating costs of marine casualty response from the payor's perspective. To place the matter in proper perspective, it must be admitted that I am also the current President of the International Salvage Union. In short, for better or worse, I have had the unique opportunity to view casualty response from all sides. This ever-escalating expense has been prompted, of course, by the environmental sensitivities attendant to almost every marine incident, either by actual environmental damage or the need to take measures to insure that ecological damage is prevented.

Any discussion of environmental considerations related to accidents must emphasize the obvious. We must do all that is reasonable, logical and effective to protect our marine resources wherever the incident occurs, be it rivers, lakes, bays, sounds or upon the deep ocean. It is important to note that the record clearly demonstrates that, with rare exception, the overwhelming majority of our marine community has of recent decades been protector rather than an abuser of the marine environment. The awareness and positive contribution to our environment includes owners and underwriters, as well as the emergency responders. Hundreds of millions of dollars, and often billions of dollars, are expended annually in salvage, wreck removal and spill response as well as other day-to-day protective measures taken by owners to insure that environmental issues are always considered of primary importance for appropriate review and successful solution. Much has been accomplished. There is admittedly more to be done.

Over the last few years, however, there has been an ever-growing public mistrust of our marine community, often driven by media and politicalization of ecological issues, all too often driven by well intended regulatory and special interest groups as well as the media. This attitude has been a contributing factor in the approach to casualty solutions, particularly wreck removal. We must question whether the cost of wreck removal and environmental expense attendant thereto is being effectively administered.

Why should we be concerned about economic resources being spent on environmental issues? Is not the environment of prime importance? The answer is simple. The answer is "yes". Notwithstanding the answer, the wasteful expenditure of financial resources in any area, environmental or otherwise, is a loss of value. At the end of the day, the general public, each and every one of us, bears the expense by increased cost of goods transported, as well as increased insurance costs directly related to the abuse in cost of emergency response. The world's financial resources are limited. Can we as a community afford to expend well over US\$200 million on a casualty such as the MS NAPOLI? The answer is "yes" if it is for good purpose and accomplishes an equitable result. But if the money is spent on legal wrangling and complicated delay while the casualty deteriorates, prompted by regulatory and legal inefficiencies, unnecessary consultancy, contractor waste and a media driven response, then it is time for review. A review of the details of the MS NAPOLI case would be of considerable value in assessing the necessity and importance of all of the interests involved.

In today's world, the list of participants is endless in any major casualty. It is time we examined the world



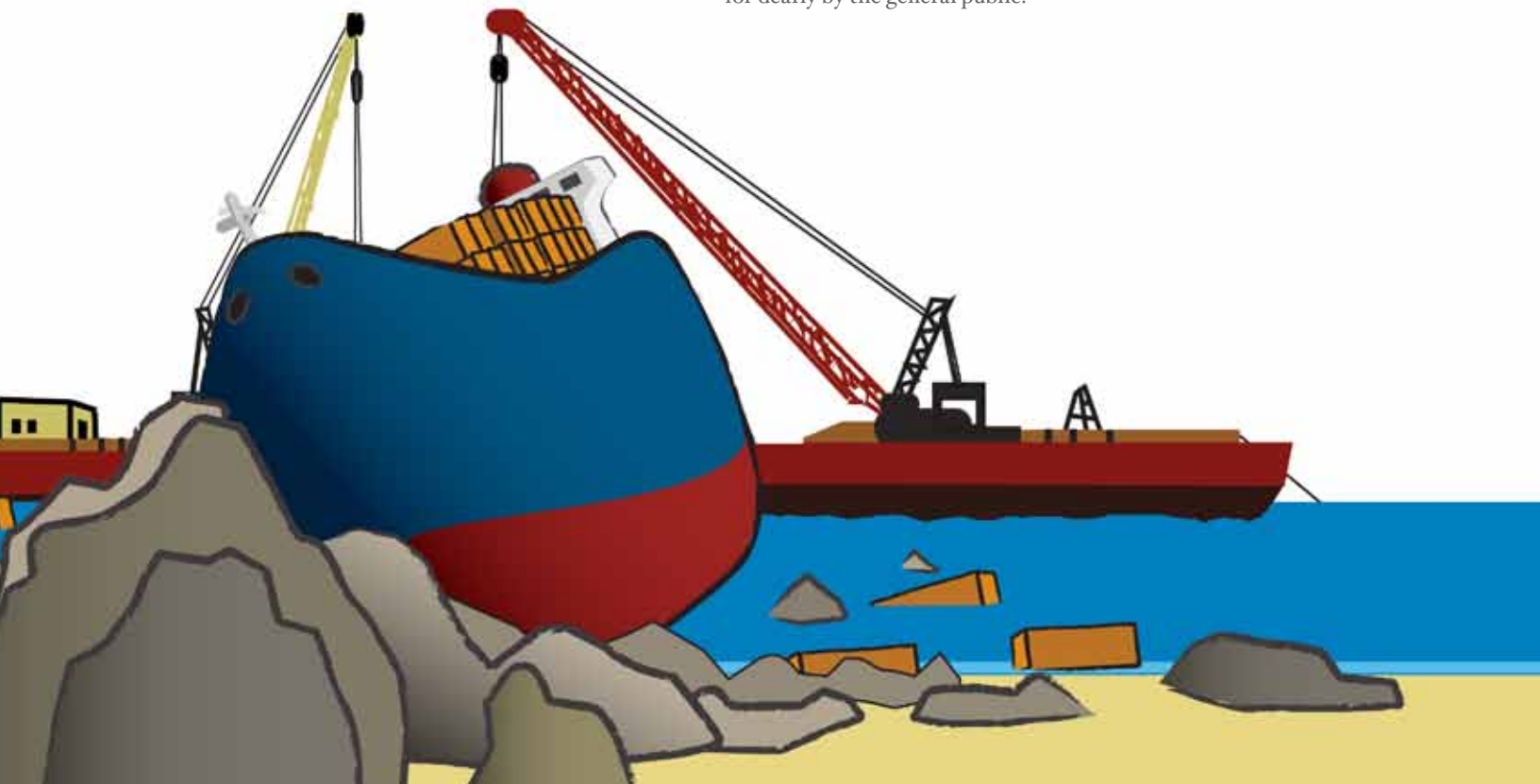
of wreck removal and emergency response in totality whether it be salvage, spill control or any other contributor to the process. That examination, in the final analysis, must involve all participants to be effective.

In the March/April issue of "Tug and Salvage," Charles Hume, Chief Executive, Shipowners' Protection Limited, spoke of the high cost of wreck removal as well as the regulatory impact on claims. Charles is also Chairman of the International Group Salvage Subcommittee. Speaking of wreck removal, Charles stated, "One of the high profile issues at the moment is why is wreck removal costing so much. There has been a stepped change in the cost of wreck removal over the past two or three years—it has doubled or tripled." He also noted, "I can't remember a time such as this, when the club funds, like other insurance funds, have declined to the extent they have."

The issues are clear and demanding of reform. Marine casualty response is becoming more complicated, expensive and time delayed. The solution must initially begin with the commitment of owners,

underwriters, and responders to review the current state of affairs within our industry. We must be assured that our current contracting mechanisms are consistent with the demands of today's world, particularly dealing with third party influences. Fair, open and competitive bidding on contract terms that are consistent with today's evolving demands is a good start. Lloyd's Open Form should also be revisited to assure conformity with today's issues.

This will require cooperation not confrontation, working together to propose a solution consistent with our marine interests, while satisfying international standards and reasonable third party concern. Our industry must then together positively approach coastal states, environmental interests, IMO and other interested parties with a methodology for marine response that will more effectively, decisively and promptly attend and successfully conclude a positive result yet consistent with reasonable regulatory and environmental standards. We must be prepared to provide the most effective response regardless of cost, yet be ever mindful that to disguise an inappropriate and wasteful effort by the color of money is a misuse of financial resources, ultimately paid for dearly by the general public.



THE POLITICS AND REALITIES OF WRECK REMOVALS: THE CASE OF THE SEA DIAMOND

by: Theo V. Sioufas

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The sinking of the SEA DIAMOND in the Port of Fyra at the Santorini Island in Greece has created a serious problem for this most beautiful island of the Aegean and its inhabitants. Since the time the vessel sank, the islanders, supported by the local authorities and the media, have organized themselves into various pressure groups and are trying to address in an effective way real and imaginary problems resulting from this very unusual marine casualty using all means available to them.

On April 6, 2006 the cruise vessel SEA DIAMOND hit a well-known reef in the greater area of the port and sank with the loss of life of only two passengers. The pollution thereby created was generally manageable as it was restricted in the region of the port. Thankfully, the bunkers (approximately 450–500 metric tonnes) were trapped in the tanks and not released to the sea. In addition, steps had been taken by the port police and the other competent authorities to effectively prevent damages to the island's coastal areas to the sea and to the environment in general.

The vessel sank at a depth of more than 150 meters and thus did not pose any risk to navigation. However, there was a concern that it still poses a serious risk to the environment and that any pollution of the island's coasts would potentially be catastrophic for their thriving tourist industry.

Various groups on the island organized as a result. Some were motivated by genuine interest for the protection of the environment; others for the promotion of political aspirations of their own and/or partisan

interests; whilst others were motivated for the promotion of personal interests. All of these groups put forward ab initio demands for the solution of the problem. These demands included the “immediate” refloating and removal of the wreck by the vessel's owners or by their P&I Club. Unfortunately, the removal of the wreck was and still is technically challenging and the cost of the wreck removal would have been immense.

The obligation to remove the wreck in this case is a matter to be determined in accordance with Greek law under the provisions of law 2881/2001 in conjunction with law 743/1977. These laws oblige the owner of the sunken vessel to remove the wreck in the case that it poses a risk to navigation or alternatively a risk to the environment. In this case, as already stated, the wreck does not pose any risk to navigation for the simple reason that it sank in a depth of more than 150 meters below the sea level.

However, the wreck is considered to pose a risk to the environment. The Greek government, acting under the severe pressure of the media and the local community, during this period of three years which has lapsed since the event, tried to find a practical solution to the problem. They felt there were two avenues available to them.

First, with regard to the removal of the wreck, it was felt that it would be extremely uneconomical and potentially not possible due to technical reasons. Second, the pumping-up of the bunkers in the vessel's tanks together with any other polluting materials to the effect and purpose that the risk of pollution would be eliminated.

After more than three years and many “studies” as to how the problem should be addressed to eliminate the risk of pollution, the solution of pumping-up the bunkers in the vessel's tanks was approved and is now in the course of being implemented. This activity has been undertaken by the vessel's owner, obviously with the concurrence and support of the vessel's P&I Club. As it is

well-known, the risk of pollution is invariably covered by all shipowners through the cover provided by their P&I Clubs and any liability in respect thereof is ultimately paid, up to the limit of the relevant cover.

Greek law in that regard is clear as to the question as to whether a wreck of a vessel should be removed and or destroyed if such wreck poses a risk to navigation or to the environment. Also, the P&I rules expressly provide that, in the case that the relevant risk is covered by the policy, the liability for costs or expenses relating to the removal of the wreck are payable by the Club to its member.

The relevant rule usually contains the wording or similar:

“Liability for costs or expenses relating to the raising, removal, destruction, lighting or marking of the wreck of an insured vessel, when such raising, removal, destruction, lighting or marking is compulsory by law or the costs thereof are legally recoverable from the Member.”

The condition set by the rule is that the removal must be compulsory by law or the costs thereof are legally recoverable from the Member. Under Greek law, the removal of the wreck is compulsory if, as aforesaid, the wreck poses a risk to the environment. The operation undertaken for the removal of bunkers trapped in the vessel’s tanks, may prove completely satisfactory for all purposes. Yet, it is highly improbable that such operation will remove all sources of pollution which may be aboard the vessel.

Unfortunately, not seeing by many as a solution determined by logic, it is expected that the populist groups on the island will not be satisfied with the solution adopted and the results to be achieved. Already there are people (and media) voicing their concerns that the risk of

pollution is still present and will continue to pose a threat to the island’s environment. One concern is that not all of the bunkers and other pollutants in and on the vessel shall be pumped-up in full. There will still be residual quantities in the tanks and other parts of the vessel that are difficult to access and therefore can not possibly be removed. Another concern, apart from the oil products, is that there are other polluting materials aboard the ship that may not be removed. Their concern is that such materials will pollute the environment. Furthermore, they allege that the risk of pollution shall remain a threat to the island, its population, its visitors and its economy.

Consequently, the Greek Minister of Merchant Marine stated on May 18, 2009 inter alia the following:

“As to the next step, the Ministry will address itself to the authoritative scientific institutions inviting them to determine whether there will be need for further actions, such as the removal of the wreck.”

In case the removal is determined as necessary, we shall proceed imposing it—whatever its costs—according to the conditions set forth by law, the scientific data and our commitments made from the outset...”





SHIP REGISTERS CAN HELP OWNERS THROUGH CHALLENGING TIMES

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In shipping, time is money, and never more so than during a global economic downturn of the type we are currently experiencing. Service providers such as ship registers are in a good position to develop practical solutions to deal with just such situations, and the Liberian Registry is currently engaged in a number of initiatives designed to help owners and operators through the ongoing financial crisis. These include agreements to permit the deferral of some annual and operational fees under certain circumstances until vessels are removed from lay-up or until they are sold; registering ships under construction; and reducing operational requirements for ships to be registered in laid-up status.

Such measures can help owners through difficult times, but Liberia is also engaged on an ongoing basis on a number of other fronts designed to keep its owners' ships moving and trading profitably. For example, the Liberian Registry's security and safety departments work diligently and efficiently to ensure that the Liberian fleet's detention record remains at a low level. This is accomplished by a variety of preventive—and, where necessary, proactive—initiatives by the registry's expertly trained inspectors and auditors, and, where appropriate, by diplomatic intervention.

The registry's dedication to intervening with port State control, and the swiftness with which it acts, has kept numerous vessels from being detained or delayed. On a number of occasions, registry staff have coordinated with port State control to clarify and rectify deficiencies before vessels have been scheduled to sail and therefore avoided any detention.

In one instance, a Liberian vessel approaching Argentina was told that, as a result of two stowaway incidents on board, it would not be allowed to enter port until a full International Ship and Port Security (ISPS) audit had been conducted. A LISCR auditor was on the vessel in less than three hours and, upon completion of the audit, the vessel entered port with minimum delay.

In a similar case in Tampa, Florida, the immediate availability of a LISCR auditor to conduct an investigation into a stowaway incident and to carry out an ISPS audit cleared the vessel to enter port. And, in Long Beach, California, an auditor boarded a vessel at two o'clock in the morning on a holiday to help a vessel rectify five ISPS deficiencies so that it could leave the port on schedule.

The registry has also been very successful in having wrongful detentions appealed, both in the US and internationally. In San Diego, California, a vessel was detained for International Safety Management (ISM) Code deficiencies that were not detainable items. The registry successfully protested to the United States Coast Guard (USCG) headquarters on the shipping company's behalf, and the detention was removed from the company's record with the USCG database, and was thus not reportable to the International Maritime Organization (IMO). Similar wrongful detentions have also been avoided in Venezuela and Indonesia.

In Savannah, Georgia, a Liberian vessel was about to be detained due to a misunderstanding of the annual security exercise requirement. Notified immediately by the company security officer, the registry contacted the USCG and, following discussions with the captain of the port and with USCG headquarters, it was found that the registry's interpretation of this part of the ISPS Code was correct. Within a few hours, the vessel was cleared to leave port.

Swift communications are vital in situations such as these. If owners and operators encounter a problem with port State control, it is essential that they contact the registry immediately so that an effective intervention can be made to keep their vessels trading.

Most recently, of course, it has been intervention of another sort—armed attacks on merchant shipping by pirates in the Gulf of Aden—which has been grabbing attention of a most unwanted nature in the shipping industry. Again, ship registers can have an important role to play here.

The Liberian Administration continues to work with IMO, the US Department of State and the European Union (EU), among others, in an effort to help resolve these piracy issues. The situation in the region is complex. Permanent solutions will require collective effort, time and patience. Owners whose ships fly the flag of Liberia can rest assured that the registry will do everything within its power both to

protect vessels from attack and, in the event that an attack does take place, to work with the authorities to effect the release of any vessels so affected, with priority given at all times to the safety of the crew.

On the subject of crew, Liberia has a jealously regarded reputation for the high priority it gives to the seafarers which man it ships, and in this regard is a committed supporter of the ILO Maritime Labor Convention (MLC) 2006. The MLC is designed to provide comprehensive rights and protection at work for more than a million seafarers around the world. Described as a 'bill of rights for seafarers', it consolidates more than 65 international labor standards. And it sets out seafarers' rights to decent conditions of work.

Although the MLC is not expected to enter force until 2011, at the earliest, Liberia is already preparing for it, in order to ensure smooth and timely implementation for owners and managers of Liberian ships. It is setting up a dedicated Labor & Welfare Division, to review legislation, and to develop new—and articulate existing—regulations, as necessary. As part of its implementation plan the Registry will soon publish the Administration's declaration of compliance and, in partnership with health, welfare and employment experts, will promulgate implementation guidance, train auditors and appoint competent Recognized Organizations. Liberia will build up a worldwide network of MLC auditors, skilled in welfare and human resource issues.

MLC compliance will be complex, involving a broad range of standard requirements and best-practice procedures. Some MLC requirements will overlap with other flag state requirements and procedures, such as ISM and annual safety inspections, and Liberia will look, as always, to harmonize procedures wherever possible in order to minimize the time, expense and inconvenience to owners, operators and crew.

The worldwide credit crunch, piracy and new legislation have placed burdens on shipowners and their crew. However, difficult times require creative thinking. The Liberian Registry stands ready to assist and ease these requirements while maintaining a reputation as the largest white listed flag administration.

The Liberian Registry is one of the world's largest and most active shipping registers, with a long-established track record of combining the highest standards for vessels and crews with the highest standards of responsive service to owners. It has recently surpassed all-time tonnage records, with 3,000 ships totalling almost 90 gross tons currently registered.

LISCR, LLC is the US-based manager of the Liberian Registry. For more information, please visit www.lisocr.com.

by: **Lindsay Malen**

Future Care, Inc.

New York, USA

THE ONLY 'SCREEN DOOR' A VESSEL NEEDS: DARE TO CARE FOR YOUR CREW

When was the last time you reflected on your personal health, your family history, or your current medical diagnosis? Take a minute and think about it. Have you been diagnosed with cardiac disease, diabetes, or hemorrhoids, or are you at the age that you would be at high risk for prostate cancer? Does your family have a history of urinary tract stones or high cholesterol? Have these diagnoses led you to seek additional medical testing or surgical treatment or require medication? If you and I suffer from these diagnoses, then it is important to keep in mind that the world's seafarers are in the same boat. The problem is that these issues become a concern after the seafarer has been sent onboard the vessel and requests medical attention.

Amongst the world of seafarers, 'Not Fit for Duty' status and repatriations caused by illnesses, are increasing and far exceed the number of injuries that occur at sea each year. The most common causes of illness-related repatriations amongst Philippine seafarers are appendicitis, urinary tract stones, hypertension, inguinal hernia, gastritis, gallstones, hemorrhoids, and cardiac disease. According to the World Health Organization (WHO), nearly 1% of the Ukrainian population is HIV-infected; the Ukraine yields the third largest population of seafarers in the world. What do all of these medical diagnoses have in common? They can

be detected through simple testing prior to the onset of symptoms.

Every ship-owner should take the lessons learned from past experiences and statistics and apply them to the present. Future Care, a maritime medical care management firm, has found that a pro-active approach to avoiding illness claims can be accomplished through a detailed Pre-Employment Medical Exam (PEME) screening, prior to a seafarer being sent to sea. During the extreme crew shortage, the PEME screening was given a back seat as to its level of importance. It was hard enough to find an experienced Captain let alone a fit one. Now that we are seeing fewer vessels at sea, this is the time to take advantage of the relative increase in the pool of seafarers. This can only be done safely with a more comprehensive PEME which accounts for the various medical factors that come with age, rank, nationality, family history, etc.

The standard PEME requirements, set forth by the WHO and International Labour Organization (ILO) guidelines, are extremely basic and only offer a minor differential approach when it comes to crew variables. For example, an electrocardiogram (ECG) is only required for seafarers 50 years and older, but cardiac disease is prominent in men 40 years and older, in those with stressful living/working conditions, and in smokers. 38% of the seafaring community are smokers whose living and working

conditions are stressful. In this case, Future Care's Physician Advisory team suggests an ECG for seafarers 40 years and older, smokers, and the top ranks, such as Captains, Officers and Engineers, as well as for any crewmember with a family history of cardiac disease. Health is not a static condition. It is always changing, and therefore we must look at illness-related issues both subjectively, on an individual case-by-case basis, and objectively, reviewing the statistics and past data we have collected as a whole.

Future Care provides its vessel-owners, ship-managers, and respective P&I clubs with an exclusive Caring for the Crew Program™. This program is an early intervention medical care management program that offers a 24/7 First Response Medical Call Line for assistance with crew-member medical claims. As a member of Future Care's program, Future Care's Physician Advisory team will review the current PEME form utilized by that member and establish a more comprehensive tailored form and system to ensure these exams are accurate. More importantly, Future Care's team of specialists will review the actual test results as the appropriate reading of the results is most significant.

This process then allows Future Care, in collaboration with the vessel-owner, to establish a medical record base for that particular crewmember. The current diagnosis



and medications utilized by that crew-member are noted in Future Care's tracking program so that the First Response team and the vessel-owner's operations team will be informed of pre-existing conditions and any possible occurrences. All future medical exams, whether a small routine treatment, a vaccination, or hospitalization, are scheduled and monitored through Future Care's Call Line and tracked in the unique risk management program. Future Care then acts as the consistent medical reference for the seafarers, allowing follow-up through one source and getting to know the seafarers' medical histories.

Future Care's medical claims tracking program allows Future Care to pull the statistics of medical claims by individual crewmember, nationality, rank, vessel, type of illness or injury, and Fit for Duty status. This assists with monitoring the vessel-owners, Loss Time Accidents (LTA) rate, and non LTA incidents rate as well as provides statistical comparative data. This program also assists Future Care's clients with tracking frequent occurrences of medical claims; Future Care can notify the owner of particular types of illnesses or injuries that are recurring with a particular seafarer or vessel. The claims tracking program allows Future Care to pull the above data for the vessel-owner and compare it to Future Care's pool of vessels enlisted in the program to see how their claims statistics may vary. Therefore, this program is a new and innovative way

for shipowners to track their medical claims under their deductible and make improvements that will yield savings to their bottom line.

Who is responsible for making these changes? At this point in time, it is procedure to allot the ship management company and manning agent to handle all crewing arrangements. The vast number of illness claims has shown a stronger link must be developed between the vessel-owner and the actual crew employment process. In order for a change to occur, the vessel-owner must become more involved as he is going to suffer an immediate loss if the seafarer becomes ill. Once a seafarer becomes ill, the vessel-owner has an initial loss of time during which the seafarer is absent from the vessel, possible vessel delays or diversions, financial medical claims, repatriation fees, possible litigation, and settlement costs. The vessel-owner must now take immediate action and discuss their PEME process with the ship management company.

Future Care has designed a comprehensive PEME specific to rank, nationality, and age. Future Care has assisted the P&I clubs in arranging medical networks of pre-approved medical facilities to perform these comprehensive PEMEs. The clinics have been audited for level of care and cost. Future Care will then read the results of the various exams, assigning a specialist to provide a second opinion, peer review (doctor to doctor), or the Fit for Duty status. Many of the clubs

have come up with specific PEME protocols to assist their members. Some clubs will reimburse the vessel-owners for cost of the exam if they utilize their pre-approved medical facilities and follow their procedure. Other clubs have generated rewards for utilizing these protocols, and some clubs have even made this change a condition of insurance coverage.

The trend of increasing costs for medical care is a worldwide phenomenon and is something we cannot ignore. The average cost of a seafarer illness claim is \$7,000 USD and the average cost of a comprehensive PEME is \$100 USD. What is the appropriate way to handle these costs; containing them from the start or reacting after the fact when it is too late? The vessel-owner will always be responsible for the costs of their seafarer's medical care. The vessel-owner must now take an early intervention approach and talk to their ship-managers/manning agents and let them know it is time for a change. It is time to take responsibility for placing medically fit seafarers onboard. It is a fact that performing a thorough PEME will decrease medically related expenditures and yield a healthier crew!

SHIPOWNERS MUST NOTIFY GOVERNMENT OF ANY PAYMENTS TO MEDICARE BENEFICIARIES

by: **John J. Walsh**

Partner; Freehill, Hogan & Mahar, New York

The United States government is now adding a new layer of responsibility to claims handling by shipowners with a series of regulations that require companies to register with and report to the Centers for Medicare & Medicaid Services (CMS) any settlements or judgments paid to Medicare beneficiaries. This would cover payments for medical expenses to passengers, harbor workers and seamen who are over the age of 65 or who are receiving Social Security disability payments. Additionally, if the shipowner is paying cure for a disabled Medicare eligible seaman, in certain jurisdictions, it may have to register and report the initiation and termination of the cure payments.

The Medicare Secondary Payers Act (MSP) was enacted to require Medicare beneficiaries to exhaust their right to collect medical expenses from any workers compensation, no fault or liability insurance “plan” before obtaining those benefits from Medicare. Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA) created reporting responsibilities for liability insurance plans which include self insurers. The regulations under that law created Responsible Reporting Entities (RREs) who must register with the Medicare Coordinator of Benefits Contractor (COBC) and report to COBC claims settled with Medicare beneficiaries or medical payments being made for Medicare beneficiaries.

Some P&I clubs have interpreted the statute as excluding a P&I Club from being an RRE, as the Club does not directly pay benefits to Medicare beneficiaries. However, shipowners who pay a settlement or a judgment are deemed to create “plans” by making those payments. Thus, it is likely that shipowners will be considered to be RREs when they pay such judgments or settlements and, unless Medicare is universally recognized as a substitute for cure payments, they may be considered RREs when they pay cure for seamen who are Medicare eligible.

The cure payments made to Medicare eligible seamen pose a dilemma. The Second Circuit, in *Moran Towing &*

Transportation Co. v. Lombas 58 F.3d 24 (2d Cir. 1995), held that Medicare is the replacement for the old US Public Health system which provided free health care to seamen. If this view is correct, no reporting need be made for cure payments, because the shipowner owes no cure to the Medicare beneficiary. However, *Moran Towing & Transportation Co. v. Lombas* has some flaws. First, the premise that Medicare replaced Public Health Service is questionable: The right to free medical treatment for seamen by the Public Health Service was funded out of the US Treasury; Medicare is funded by premiums paid by workers. If the shipowner did not pay Medicare premiums, there is a question as to why other Medicare premium payers should subsidize the shipowners’ obligations. Second, the court refused to address the question whether the shipowner should be responsible for a premium or a co-payment made by the seaman. Third, the *Moran Towing & Transportation Co. v. Lombas* decision did not mention what impact the MSP may have had on this issue.

The district courts in New Orleans, Savannah and Miami appear to be following the Second Circuit but district courts in New England have held that eligibility for Medicare does not terminate the cure obligation. If their view prevails, then payments of cure to Medicare eligible seamen are reportable to CMS, if they are part of a self insured “plan.”

For the cure payments to be reportable, the “plan” must be either a workers compensation “plan” or a liability self insurance “plan.” The two New England district courts reasoned that payment of cure by the shipowner was a workers compensation plan but ignored critical differences between workers compensation and maintenance and cure. The courts found maintenance and cure to be similar to workers compensation but failed to cite any authority that maintenance and cure was a workers compensation plan.

There are significant differences. First, maintenance and cure is a contractual or quasi contractual obligation; workers compensation is a statutory

obligation. Second, maintenance and cure must be paid if any injury or illness manifests itself while the seaman is in the service of the ship; workers compensation usually requires that an injury or illness arise out of and in the course and scope of employment thereby requiring causal connection that does not exist in maintenance and cure.

Thirdly, state workers compensation laws almost uniformly provide statutory rates for medical services that are mandatory and cheaper than market rates charged by the health care providers. Shipowners paying cure have no right to restrict their liabilities to those rates. These differences are sufficiently significant to exclude maintenance and cure from the meaning of Workers Compensation.

That leaves the possibility that cure payments could be part of a self insured liability plan. No case has called cure payments a self insured liability plan. Yet, cure liability does attach on the occurrence of the injury or illness and is arguably a self insured “plan” whose payments to Medicare beneficiaries may have to be reported, if the shipowner must pay cure for a Medicare beneficiary.

Unquestionably, settlements and judgments paid to Medicare eligible claimants must be reported. If there is a claim now pending with a person who is Medicare eligible, the shipowner as RRE must comply with the reporting requirements by July 1, 2009. If the shipowner does not register with the COBC by July 1, 2009 because there is “nothing to report,” then it must register “in time to allow a full quarter for testing if they have future situations where they have a reasonable expectation of having to report.” Even though there is “nothing to report” by July 1, 2009, it may be advisable that as soon as the shipowner receives a claim from a Medicare beneficiary, it should register and report the claim to the COBC, to avoid heavy penalties.

The registration requirements are fairly simple but the reporting requirements are not. The company needs to appoint one of its employees as an “authorized representative.” This is the individual

in the RRE organization who has the legal authority to bind the organization to a contract and the terms of MMSEA Section 111 requirements and processing. The authorized representative cannot be a third party agent.

The authorized representative appoints an "Account Manager" who can be a third party agent. The Account manager is the individual who controls the administration of an RRE's account and manages the overall reporting process. He/she must register with the COBC on the COBC's website, obtain a login identification and complete the account setup tasks.

If the shipowner needs to register, it must be done between May 4, 2009, and June 30, 2009. To register, a company representative for the RRE must go to the COBC's website (www.section111.cms.hhs.gov), click on the "New Registration" button, complete and submit the registration for the RRE. The registration asks for basic information after which the COBC will send the RRE a log in ID. The Account Manager then provides the report on the claims which appears to be an intricate process requiring some training on compatibility between the shipowner's software and the COBC software.

Failure to report incurs "a civil money penalty of US\$1,000 for each day of noncompliance for each individual for which the information ... should have been submitted."

The reporting requirement assures that Medicare can track those recipients who already have received payments for future medical expenses, so that they do not later claim the same expenses from Medicare. Medicare reviews the settlement and judgment to calculate how much needs to be set aside to pay for future medical benefits that would otherwise be payable by Medicare.

Initially, the set aside law only applied to workers compensation plans. It was then expanded to Group Health Plans and no fault insurance plans and those liability plans which paid upon occurrence of the injury. Traditional insurers of tort liabilities were held exempt by the court as they were not a "plan." Congress changed the law so that when a settlement in a liability case is reached with a Medicare beneficiary, a "plan" exists and the parties must propose a set aside for future medical expenses that would otherwise be covered by Medicare. The proposal must be approved by CMS. Unfortunately, the lag time between submission of the proposal and approval

is long which makes settlement negotiations difficult. Moreover, at least up to now, some CMS districts are not reviewing set aside for liability cases. Indeed, there has been little monitoring by CMS and the only reported cases have been those involving class action settlements for large sums of money being paid for future medical expenses in toxic tort situations.

For that reason, in practice, the Medicare Set Aside has traditionally been viewed as a problem for the claimant and his attorney and of no concern to the shipowner and its attorney. However, going forward this may be short sighted, as the registration and reporting system assures some, if not perfect, monitoring. If there is no set aside, or if the set aside is deemed at some time to be insufficient, then CMS may pursue "the injured party, provider, supplier, physician, attorney, state agency or private insurer that has received any portion of a third party payment directly or indirectly."

CMS may recover twice the amount spent on the medical expense that should have been paid out of the set aside. Thus, defense counsel need to protect themselves and their shipowner clients by assuring that there is an adequate set aside. A set aside should be proposed and sent to CMS in the absence of similar action on the part of the claimant. There are specialists who are knowledgeable on calculating the future medical expenses that have to be included in the set aside but no matter how expert they are, their calculations do not furnish a defense to liability for an inadequate set aside. Without CMS approval, application to the Court may be appropriate, even though CMS deems court approval as non binding.

The adequacy of a set aside can be controversial. Settlements by definition are compromises of doubtful situations not the least of which is the prospect of incurring future medical expenses. Liability may be certain and causation may be without question but it may be highly questionable whether the claimant will require any future medical treatment. The parties ought to be able to allocate the settlement in accordance with the risk that is being released.

The US Supreme Court in *Arkansas Health & Human Services v. Ahlborn*, (547 U.S. 268) limited Medicaid's lien to that portion of the settlement which related only to medical expenses. Medicaid claimed that it had a lien on the whole settlement amount but the

Supreme Court allowed the parties to limit by agreement the amount against which Medicaid could assert a lien to the medical expenses specified by the parties. Similar reasoning may apply to a settlement limiting the Medicare set aside to a portion of the pay out which the parties agree relates only to medical expenses. However, it is unlikely that the parties can exclude all medical expenses from the settlement agreement to avoid the set aside, where the shipowner is being released from liability for future medical expenses.

The set aside need not be a complicated trust instrument. In fact, it can be a bank account in the beneficiary's name that is used solely for the payment of Medicare covered expenses. In catastrophic injury situations, it may be prudent to create a trust instrument with a competent trustee who can assure that the distributions are appropriate.

While the new requirements may seem daunting, they can be handled with some foresight. Shipowners can rely on defense counsel to assure that they are protected from liabilities

under the set aside requirements. The registration requirement (after a claim by a Medicare beneficiary is made) is relatively simple and can be done by an employee with little or no training. However, the reporting requirements will need a trained person to navigate the computer issues and the search for such trained assistance ought to commence now, even for those shipowners who need not meet the July 1 deadline.



The American Club's Managers thank Mr. Walsh for his efforts in describing the effects of the new Medicare reporting law. The Manager's position on the Medicare reporting law is outlined in the American Club's Circular No. 13/09, published on May, 13 2009.

FD&D CORNER

by: **Parker Harrison, Esq.**

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FROM HERE TO ETERNITY: CLAIMS TIME BAR REVISITED

In late October 2008, the Commercial Court handed down a decision in which it revisited the question of the proper interpretation of the claims time bar in the BPVOY voyage charter party form. In *The Petroleum Oil & Gas Corp. of South Africa (PTY) Ltd. v. FR8 Singapore PTE Ltd.* [2008] EWHC 2480 (Comm) (*The ETERNITY*), the Charterers claimed that their GASOIL and MOGAS cargos were contaminated due to Owners' failure to properly separate the vapor phases of these cargos from the vessel's common inert gas system (IGS). Owners also asserted a counterclaim for demurrage. The Court first determined that, under the Hague-Visby Rules (which were incorporated into the charter), Owners were obliged to exercise only due diligence with respect to the condition, operation, and maintenance of the IGS. However, Owners could *not* rely on the Hague-Visby defense of negligent management of the vessel.

The Court also considered whether Owners' demurrage claim was time-barred as a consequence of their failure to present pumping logs signed by the terminal, in breach of Clause 19 of the charter party, in support of one element of the demurrage claim. Clause 20 of the BPVOY 4 form releases Charterers from all liability for demurrage, deviation, or detention unless Owners present their written claim, "together with all supporting documentation where possible substantiating each and every part of the claim," within 90 days of the completion of discharge. In its prior decision in *Waterfront Shipping Company Ltd. v. Trafigura AG* [2007] EWHC 2482 (Comm) (*The SABERWING*), the Commercial Court construed the corresponding clause in the BPVOY 3 Form and held that, where each and every component part of the claim was not fully substantiated, the entire demurrage claim was time-barred.

The ETERNITY Court declined to follow *The SABERWING* ruling, finding instead that only the single element of the claim that was not properly documented was time-barred, while the balance of the claim was timely. *The ETERNITY* Court found it "commercially surprising" that a claim asserted on time should be barred in its entirety simply because the documents supporting one discrete part of the claim failed to meet the charter requirements. Needless to say, these conflicting decisions provide little comfort to Owners faced with a relatively

brief window of opportunity within which to compile documents to support each element of a potentially complex demurrage claim. Leave to appeal has been granted in *The ETERNITY* case, so perhaps the Court of Appeals will bring clarity and certainty to this question. In the meantime, Members are encouraged to provide as much information and as soon as possible when presenting such claims to charterers.

NOTHING NEW UNDER THE SUN: REMOTENESS OF DAMAGES AFTER THE ACHILLEAS

In the last issue of *CURRENTS*, the Managers reported on the English House of Lords' decision in *Transfield Shipping Inc. v. Mercator Shipping Inc.* [2008] UKHL 48 (*The ACHILLEAS*), in which the Court confirmed that a charterer's liability for late redelivery is based on the parties' intentions at the time of contracting. Based on the familiar principles of foreseeability and remoteness, the Court determined that, absent some special knowledge of the terms of a follow-on fixture, the charterer's liability is limited to the period of overrun at the market rate. In reaching his decision, one Judge observed that, at the time the charter was entered into, the charterers could not reasonably have been assuming responsibility for the owner's potential loss of profit in the event of charterer's breach. In a recent case, the English High Court rejected the notion that *The ACHILLEAS* had formulated a new test for the recoverability of damages for breach of contract.

In *The AMER ENERGY*, the Charterers voyage chartered a ship to their affiliate to carry a cargo of gasoil that the affiliate had agreed to sell to a third party. The ship arrived late to the loadport and the third-party buyer canceled their order. The Charterers' affiliate suffered a resulting loss of profit for which the Charterers were liable to indemnify them. The Charterers then claimed damages from the Owners, and the dispute proceeded to arbitration.

In an award published shortly after *The ACHILLEAS* decision was handed down—but without considering that decision or its potential impact on the dispute before it—the Tribunal awarded Charterers over US\$750,000. Owners applied to the High Court for leave to appeal, arguing that the tribunal had failed to apply the new "assumption of responsibility" test of remoteness,

which required that the loss Charterers claimed be of a kind for which Owners must be taken to have assumed responsibility. The High Court rejected this argument, finding that *The ACHILLEAS* created no new test for remoteness. Further, on the facts presented, the Judge found that the particular loss claimed was not unforeseeable from the vessel's late arrival, and moreover that Owners had actual knowledge of the special circumstances giving rise to that loss. The tribunal's award was therefore affirmed.

If indeed *The ACHILLEAS* created no new test for remoteness of damages, then the decision may have much narrower application than had previously been anticipated.

CATCH ME IF YOU CAN: RULE B WEAKENED BY RECENT RULINGS

The GLORY WEALTH decision and "found within the district"

In recent installments of FD&D Corner, your managers have tracked the recent evolution of Rule B in the New York courts as a means of attaching electronic fund transfers ("EFTs") to or from a defendant in the hands of an intermediary bank. This unique procedure has become one of the most widely used means of obtaining security against otherwise elusive defendants, and the courts within the Second Circuit (which includes the federal district courts in New York) have imposed various obstacles to Rule B to stem the tide of Rule B proceedings that have recently flooded the courts and purportedly disrupted the banks' operations.

To qualify for a Rule B attachment, the claimant must show that the claim in question is maritime in nature and that the defendant cannot be "found" in the district over which the court presides. Historically, a defendant is "found" within a district if it is *either* physically present, or subject to service of process, in the district. However, in March, the U.S. Court of Appeals for the Second Circuit decided in *STX Pan Ocean (UK) Co. Ltd. v. Glory Wealth Shipping Pte. Ltd.*, 560 F.3d 127 (2d Cir. 2009), that a defendant who registers to do business in New York State and appoints an agent for service of process within the court's jurisdiction is "found" within the district and thus immune to Rule B attachments.

In the wake of the *GLORY WEALTH* decision, a large number of foreign shipping interests have registered to do business in New York, and this trend is expected to continue. Registration is cheap, easy, and fast and immediately prevents Rule B attachments of the company's assets going through New York banks. However, this solution is not without its drawbacks. Registration may insulate a company from Rule B attachments, but it also subjects the company to the jurisdiction of the New York courts so that it may be sued in the state on any cause of action whatsoever – not just maritime claims. Registration also potentially subjects a foreign company to a number of U.S. laws, including U.S. sanctions laws

(e.g., Iran, Cuba, Sudan, and Myanmar), state and federal taxation requirements, and involuntary bankruptcy laws.

The CALA ROSA decision and continuous Rule B service

New York law provides that a Rule B attachment order is effective to seize funds only if the funds are already in the bank's hands at the time the order is served. To streamline the service procedures involved in Rule Bs, New York courts have created the fiction of continuous 24-hour service – that is, the attachment order is treated as being continuously and repeatedly served for 24 hours from the time of actual presentation at the bank, so long as they are re-served every day thereafter.

This fiction may be on its way out if the recent decision of one judge of the Southern District of New York is followed. In *Cala Rosa Marine Co. v. Sucre et Deneres Group*, No. 09 Civ. 425, 2009 WL 274486 (S.D.N.Y. Feb. 4, 2009), Judge Scheindlin issued the Rule B order as requested, but refused to order the banks to treat the attachment papers as having been continuously and repeatedly served. In effect, this ruling means that the funds can only be seized if they were in the bank's hands at the very moment that the papers were served. Given the speed with which EFTs are processed in today's banking system, this ruling makes a successful attachment all but impossible. Although the *CALA ROSA* court did note that the garnishee banks could voluntarily treat the service as continuous, most banks will likely decline due to their alleged administrative and financial burdens associated with honoring Rule B attachment orders.

The *CALA ROSA* court also rejected the custom of permitting the claimant to appoint a private party to serve the attachment order on the garnishee banks; instead, the claimant was required to appoint the U.S. Marshal for this purpose. The resulting delays and increased cost of Rule B service by the Marshal's office are further restraints on the utility and effectiveness of Rule B as a means of obtaining security for maritime claims.

It is not yet clear whether the *CALA ROSA* decision will be followed by other judges in the Southern District of New York, but it sets a dangerous precedent which, along with the *GLORY WEALTH* holding, will undoubtedly make it harder for maritime claimants to obtain security via Rule B attachments of EFTs. The Managers stand ready to field any inquiries from the Membership on this constantly changing landscape and will continue to monitor these and any other developments on Rule B attachments.



The availability of damages following termination of shipbuilding contract

In *Stocznia Gdynia SA and Gearbulk Holdings Limited* [2009] EWCA Civ. 75, the English Court of Appeal recently determined that a buyer who terminates a shipbuilding contract under the contract's terms may be entitled to damages in addition to recovering the installments of the price already paid.

In that case, Gearbulk entered into six substantively similar contracts with the Yard for the construction of six vessels to be delivered on staggered dates between 2001 and 2004. Three of those vessels were never delivered, and Gearbulk exercised its right to terminate the contracts for those vessels, based on the Yard's delay, under the relevant provisions of the contracts. Article 10 in particular dealt with the effect of termination, as well as liquidated damages by way of reduction of the final installment of the purchase price for shortcomings in a vessel's speed, fuel consumption, and deadweight capacity.

The claims under the three terminated contracts were referred to arbitration in which Gearbulk asserted that the Yard had repudiated those contracts, that Gearbulk had accepted the repudiations as terminating the contract, and that Gearbulk was entitled to recover damages for the loss of its bargain in accordance with ordinary contract principles. In response, the Yard argued that there had been no repudiations that Gearbulk had exercised its Article 10 right to terminate the contracts and was therefore precluded from treating the contracts as repudiated, and that Article 10 by its terms excluded any claim for damages following termination.

The arbitrator rejected the Yard's arguments and determined that Gearbulk was entitled to recover damages. On appeal, the Commercial Court held that Article 10 did not preclude a damages claim, as it was not a complete contractual code that excluded all other rights of termination. However, the Court rejected Gearbulk's claim for damages on the basis that Gearbulk had terminated the contracts, relied upon the contract provisions, and made a claim under the Refund Guarantee for return of the installments paid up till the time of termination.

In a unanimous decision, the Court of Appeal again rejected the Yard's assertion that Article 10 was an election that required Gearbulk to *either* treat the contracts as repudiated and seek damages under the general law, *or* invoke its contractual termination rights.

The Court next considered the Yard's assertion that Article 10 created an exclusive remedy that precluded Gearbulk's right to recover damages for the loss of its bargain. Based chiefly on the presumption that neither party to a contract intends to abandon any remedies for breach arising by operation of law, and that clear, express words are required to overcome that presumption, the Court likewise rejected this argument and held that Gearbulk was not precluded from claiming common law damages for repudiation of the contracts.

While this decision is of some importance, insofar as it leaves open the possibility of recovering common

law damages for contract repudiation in addition to other remedies, such as return of the installments paid, it appears to have been based on the particular facts and contract terms at issue. Its application may therefore be limited.

This one's just right: LMAA introduces new Intermediate Claims Procedure

In March, the London Maritime Arbitrators Association (LMAA) introduced a new "condensed" arbitration procedure intended for mid-range disputes (i.e. where the amount in dispute ranges from US\$ 100,000 to US\$ 400,000), in which costs exposure may be contained to a greater extent than in ordinary LMAA arbitrations.

The Intermediate Claims Procedure 2009 (ICP) is designed to complement the three existing types of LMAA procedures: (1) the standard, full-blown procedure under the full LMAA terms 2006; (2) the Fast and Low Cost Arbitration (FALCA) procedure; and (3) the Small Claims procedure. Although the mechanisms for the order of submissions and evidentiary matters are essentially the same in all these types of LMAA procedures, they differ with respect to those areas that are cost-sensitive, including chiefly disclosure, expert evidence, and hearings, not all of which are very attractive or necessary in relatively low-value and/or straightforward disputes.

Perhaps most importantly, the ICP caps the parties' respective costs by reference to a percentage of the claimant's monetary claims, as well as any counterclaims. If there is no oral hearing, the recoverable costs are limited to 30% of this figure; if there is an oral hearing, the percentage goes up to 50%. The tribunal's costs are likewise capped by reference to a percentage of the claim value(s). This new procedure should give parties considering LMAA arbitration a better picture of the potential costs exposure (and recovery) and, hopefully, enable them to more closely monitor the costs incurred during the arbitration itself.

Other noteworthy features of the ICP include:

- limited rights of appeal;
- no automatic right to an oral hearing;
- no formal disclosure stage;
- no expert evidence without express permission from the tribunal; and
- intention to deliver an Award within six weeks of the final submissions.

The success of the ICP will likely depend on how well it delivers more timely and cost-effective dispute resolution—goals that are all the more pressing in the current economic climate, in which all parties are paying very close attention to the bottom line.

The full LMAA Intermediate Claims Procedure 2009 can be viewed in the "Terms" section of the LMAA's website at www.lmaa.org.uk.



by: Tony Goldsmith
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THE BEGINNING OF AN INCREASED USE OF SCOPIC?

Following several tanker casualties, notably TORREY CANYON (1967) and AMOCO CADIZ (1978), the maritime community recognised the need to encourage salvors to save the environment from oil pollution not just save valuable property. The 1980 edition of Lloyd's Open Form ("LOF") provided a mechanism for salvors to recover their expenses, plus an increment, where the salvage services carried out on tankers laden or part-laden with oil cargoes on the "no cure-no pay" basis were unsuccessful. P&I clubs picked up these expenses, and any resultant legal costs, on behalf of their members. P&I clubs therefore had a more direct exposure to, though not influence over, salvage operations from this time.

The Beginning of an Increased Use of SCOPIC?

The mechanism under LOF 1980 was replaced in LOF 1990 by an alternative award under Article 14 of the 1989 Salvage Convention. This increased the involvement of P&I clubs further but did not increase their influence. Further, considerable difficulties were experienced when assessing Article 14 awards, leading to substantially increased costs for the P&I clubs in dealing with such awards. This in part resulted in the industry creating the Special Compensation Protection & Indemnity Clause (“SCOPIC”) which provides an alternative system to Article 14. Notably the SCOPIC system was devised to kick in whether or not there is a threat to the environment, thereby further increasing the financial exposure of P&I clubs to salvage operations.

SCOPIC does not automatically apply to salvage services. The services must be provided (1) on the basis of an LOF incorporating SCOPIC, and (2) the salvors must invoke SCOPIC by giving written notice to the shipowners. As a consequence, shipowners and their P&I clubs still potentially face Article 14 awards if SCOPIC is not invoked, though this route is not often used these days. When SCOPIC is invoked its clauses, appendices, codes of practice (referred to below) and prescribed form of salvage guarantee come into play. This includes the Special Casualty Representative mechanism, whereby shipowners and their P&I clubs (as well as cargo and hull underwriters) are entitled to have their interests represented in a prescribed manner at the casualty site. This is a major benefit to shipowners and their P&I clubs in that it provides them with greater knowledge of, and potential influence over, the handling of casualties for which they have an interest.

An added benefit of the SCOPIC scheme is found in the “Code of Practice Between International Salvage Union and the International Group of P&I Clubs”. This Code fosters openness and assists in clarifying financial issues early. Amongst other things, the salvor agrees to notify the relevant P&I Club as soon as possible if they consider a claim under SCOPIC may arise. Conversely, the relevant P&I Club will advise the salvor if there may be coverage issues that might result in the Club not covering the owners’ liabilities in SCOPIC. The Club will also post security within the prescribed time-frame and in the prescribed form although the Code of Practise expressly recognises that the Club may not post security in circumstances where the member has failed to pay their calls or there is a breach of warranty (the section talks about a breach of warranty generally and also expressly refers to a breach of warranty rules relating to classification and flag state requirements).

Before discussing the reasons that may or may not result in greater reliance being placed on SCOPIC in the

near future we first consider some statistics in relation to SCOPIC since its inception. By looking back this should assist when considering where SCOPIC might go in the future.

According to figures from the International Salvage Union (“ISU”):

1. In the period from the introduction of SCOPIC in August 1999 to March 2007 there were 844 LOF cases;
2. The SCOPIC clause was invoked on 183 occasions, representing 22% of the post-SCOPIC LOF cases;
3. Only five SCOPIC cases have gone to arbitration.

Following a review of information available from Lloyd’s Salvage Arbitration Branch (“LSAB”) the following year-by-year data on SCOPIC and non-SCOPIC invoked cases can be tabulated:

YEAR	SCOPIC INVOKED	SCOPIC NOT INVOKED	UNKNOWN STATUS	SCOPIC %
2009	4	7	6	23
2008	16	25	32	22
2007	23	33	36	25
2006	13	19	35	19
2005	19	36	49	18
2004	13	23	54	14
2003	28	23	35	32
2002	17	38	50	16
2001	26	83	0	24
2000	19	110	2	14
1999	1	17	0	5
TOTALS	179	404	299	20

N.B. LOF casualties of an unknown status have been treated as non-SCOPIC cases because the positive act of giving written notice to the shipowners to invoke SCOPIC is necessary for SCOPIC to apply.

From other data we have, the average spend per P&I club on SCOPIC each year is about US\$2.6m. Except in those years where there are specific examples of high cost/high profile casualties, such as TRICOLOR (2002) and more recently the MSC NAPOLI, there is no obvious trend of increased sums being paid under SCOPIC year-on-year. There is also no obvious correlation between sums paid under SCOPIC by comparison to the expense of wreck removals, which on average amount to about US\$7m per P&I club each year, again subject to high cost/high profile casualties such as the recent cases in Gibraltar of the NEW FLAME and FEDRA.

Given the number of SCOPIC invoked salvages, the fact that only five have gone to arbitration is a testament to the SCOPIC scheme being considerably more user

friendly and cost effective than the Article 14 regime. Cases are therefore generally resolved faster, avoiding lengthy and costly arbitrations. The LSAB tabulation (albeit incomplete) also indicates no obvious trend of an increasing use of SCOPIC by salvors since the scheme was put in place.

Against this background, what factors are likely to influence the decision by salvors to invoke SCOPIC?

VESSEL AND CARGO VALUES

The most obvious factor in today's market is the reduced values of vessels and their cargoes. This will place a lower cap on salvage awards and make it less likely that an award acceptable to salvors will be obtained on a "no cure — no pay" basis alone. Given current market lows for the values of many vessels and cargoes it is now significantly more likely that SCOPIC would be invoked in cases where salvage is performed on the basis of LOF.

While market problems were predominantly limited to dry shipping in the early stages of the credit crisis, the influence of the world economic slowdown is increasingly impacting on wet shipping too. Both are evidenced by falls and rapid fluctuations in the major shipping indices. Hire and freight rates are well known as key factors in determining vessel values, as are new building and scrapping rates, which directly influence the supply of vessels. While many shipowners now seek to cancel new builds there were many ordered at or around the peak of the market several years ago, many of which will be built in any event. This will only be counterbalanced by scrapping rates enticing shipowners to dispose of older vessels, but scrap metal rates are also depressed. The commodity prices for major dry cargoes such as iron ore and coal and major wet cargoes such as crude oil and oil products have also fallen and they too are subject to unpredictable fluctuations. On the whole, market conditions in both the shipping and commodities markets are not predicted to rise substantially for a number of years to come.

Market volatility in itself could be a sufficient influence for salvors to invoke SCOPIC. Where there is market volatility, vessel and cargo values at the time of commencing an operation may be much higher than when the vessel and cargo arrive at a place of safety (being the time at which the value of the salvaged fund is to be assessed). Given the manner in which SCOPIC payments are calculated salvors will be mindful not to leave it too late before invoking, and in a volatile market will be more likely to do so earlier rather than later.

As discussed above, SCOPIC is only relevant when salvage services are performed under LOF. In recent times there has been much debate and concern expressed by hull underwriters at the high level of salvage awards.

This limits the likelihood of SCOPIC ever been invoked but the general concerns of the hull market has resulted in a reduced usage of LOF in recent times. With a reduction in values, hull underwriters may show less reluctance over salvage services being performed under LOF. This will likely further increase the use of SCOPIC.

We are seeing a lot of vessels being laid up and/or anchored for long periods. There is reduced shipping activity. This might logically reduce the number of casualties and the consequent number of salvage services. This does however need to be balanced against the fact that there are large numbers of vessels lying dormant in crowded anchorages, increasing the prospects of incidents. Also, some ship owners are suffering large losses due to high running costs (often significantly higher to meet high borrowing costs arising from purchasing at the top of the market) compared to earnings. This will inevitably result in some cases of reduced funding for maintenance, crewing and training. This too will likely increase the likelihood of casualties. How ultimately this will all play out is not yet known, but if there are more casualties they will generally speaking be of lower value than in recent years which will result in greater potential for SCOPIC being invoked.

CONCLUSIONS

From the available statistics there has been no obvious increase in the use of SCOPIC since its inception until recently. However, when salvage is performed on LOF terms the likelihood of SCOPIC being invoked will inevitably increase as a result of depressed vessel and cargo values. If, as is often the case in such times there is a greater number of casualties then this too will increase the number of salvages and consequently (given reduced values) the prospects of SCOPIC being invoked. This will inevitably result in P&I clubs facing greater financial liabilities.

CORRESPONDENT PROFILE

THE VIEW FROM GIBRALTAR

by: Paul Imossi

Smith, Imossi & Co., Ltd.

Gibraltar

Smith Imossi & Co Ltd is a well established name in the Shipping and Insurance Industry and was originally founded as Shipping Agents in 1838 by William James Smith under his own name, and was joined by the Imossi family in 1867.

In 1838 the firm was already the agents for P&O, acquiring this position only a few months after the formation of that organisation and maintaining it until 1969.

Since its inception, the company's principal business has been as shipping agents and became agents for the Corporation of Lloyd's in 1883. Smith Imossi acts as correspondents and agents for numerous Insurance Companies and P&I Clubs, they operate a 24 hour business and have vast experience in all aspects of shipping and insurance.

Given the geographical position of Gibraltar, the port has always been a busy bunker station, previously coal and now able to supply all fuel oil grades.

A history of Smith Imossi would be incomplete without mention of the Java Indiaman. Many still remember her as a bulk moored in the bay with her masts cut down and used as a coaling depot.

The Java was acquired for this purpose in 1854, but on arriving in the bay of Gibraltar she struck the Pearl Rock and had to return to Falmouth to repair, where it was

found that a large piece of the rock was still embedded in her forefoot.

The origin of the ship is interesting. Towards the end of the eighteenth century the daughter of an Indian provincial governor was kidnapped and carried away by natives and a search party under a Lieutenant of the company was sent to rescue her.

The unfortunate girl was discovered hiding behind a bush, naked, as her clothes had been stolen by her captors, but otherwise unharmed. In token of his gratitude the girl's father built this fine ship at Calcutta and presented her to the Lieutenant. The Java's figurehead was that of a nude woman with hands crossed over her breast.

Java was years back adopted as their telegraph address and provides an interesting link with an illustrious past.

Over the years, the company inevitably had to deal with a number of serious incidents at sea. On 13th December 1911, the P&O steamer DELHI ran aground at night on the Moroccan coast two miles from Cape Spartel, Tangier, in very rough weather. On board, among the 85 first class passengers, were the Princess Royal, Duchess of Fife, with her husband and two daughters.

In addition to the members of the royal family and numerous other passengers, 8090-ton DELHI was



carrying nearly £295,925 in gold and silver bullion and a valuable general cargo, all of which was later salvaged.

On the 14th April 1936, a potentially serious situation arose when the P&O steamer RANPURA ran aground in a heavy gale on the sandy beach at Puente Mayorga of £10,000,000. Chinese lore had it that disaster would strike anyone involved in removing these treasures from China! They were being returned after having been exhibited in London. After three days of strenuous efforts by Admiralty tugs and other craft, RANPURA was finally re-floated and found to be undamaged. The story goes, that as it was deemed impossible to make a true assessment of the value of the treasures for salvage purposes, as it was realised that on the basis of General Average this would have to be met almost entirely by the Government as shippers of this immensely valuable cargo, the matter was amicably settled with the presentation of a gold cigarette case to the captain in charge of the operation. One hopes that there were also some pecuniary 'expressions of thanks' for the lesser mortals involved.

Lately the company has acted as correspondents for three other significant incidents, these being the grounding of the SAMOTHRAKI, a tanker fully laden with fuel

oil. The NEW FLAME, which sunk with a cargo of scrap metal, after a collision when departing from Gibraltar, off Europa Point, The Fedra, whilst anchored on the eastern side of Gibraltar undergoing engine repairs was dragged by a severe storm onto Europa Point where she broke in two pieces. These last two incidents are still ongoing with wreck removal operations still underway.

For many years Smith Imossi have been owners of harbour craft serving the passenger and cargo requirements of visiting ships. Today they are operators of two launches which service all vessels at the anchorage and off port limits, given that Gibraltar is widely used by shipowners for crew changes and the delivery of stores and spares utilising an airport which is only 2km away from the port.

Today Smith Imossi & Co Ltd, are the Gibraltar agency best versed in all aspects of shipping and marine insurance. Their offices, which in the early days were at Horse Barracks Lane, are now situated at 47 Irish Town, which has for years been the main shipping district of Gibraltar.



SEAFARERS' SCOURGE: STDs

by: **Glenda Canlas, M.D.**

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The term sexually transmitted diseases (STDs) refers to a group of diseases whose mode of transmission is unprotected sexual contact. It includes syphilis, gonorrhea, trush, chlamydia, genital warts, non-specific urethritis, trichomoniasis, pubic lice, scabies, hepatitis, B, C and of course, HIV/AIDS.

The seafaring population in general is considered an extremely high risk group for contracting these diseases.

The factors that increase their risk include: prolonged separation from spouses and partners leading to an increased chance of sex with professional sex workers or casual partners; drinking of alcohol, resulting in a loss of inhibition and more risky behavior such as unprotected sex; boredom and lack of other leisure activities; and lack of awareness and education about the dangers of unprotected sex.

The Philippines, however, is considered a country of low HIV/AIDS prevalence. As of August, 2008 there are 3,305 registered HIV/AIDS cases in the country since 1984 (793 are AIDS cases of which 310 having already died). In a population of 90 million, this would mean that the adult prevalence of the disease is less than 0.1%.

According to World Health Organization (WHO) experts, this overall low rate is attributed to factors such as the relatively lower ratio of Filipino men who seek professional sex workers, the fact that the majority of Filipino men are circumcised and the availability of health services to treat and protect sex workers from sexually transmitted diseases.

However, the actual number of infected Filipino seafarers cannot be determined. HIV testing has not been made mandatory by the government in the pre-departure medical testing/pre-employment medical exam (PEME) of the estimated 300,000 seafarers. The decision to conduct the test is made by the employer. It is also included in the medical package of a number of P&I Club PEME Projects.

As for the prevalence of other kinds of STDs among Filipino seafarers it appears to be low as well. In July, 2007 the Philippine Department of Health made VDRL (Syphilis) testing a mandatory part of the pre-departure medical exam/PEME. An interview conducted among member clinics of the Maritime Clinics and Doctors Association of the Philippines revealed that since 2007 the VDRL-reactive rate in these clinics remains at less than 1%.

The number of sexually transmitted disease cases treated by the post-medical clinics is also low. One post-medical doctor estimates the rate to be less than 0.1%. One major clinic had seen only one case of STD (genital warts) for the entire 2008.

These modest figures, however, are not a reason for complacency. Although the Philippines is currently experiencing low HIV/AIDS rates it does not mean that the country

is not at risk of experiencing an explosive increase in the number of these cases or any of the STDs in the future. This has already occurred in Vietnam and Indonesia.

It is believed that the increase can come from an importation of the disease from returning overseas workers. In 2008, 35% of the diagnosed HIV/AIDS cases were among returning overseas workers with seafarers having the highest incidence.

Therefore, the concerted effort from both local and international governments and maritime industry sectors must continue, especially in the areas of education and prevention among high-risk groups like our seafarers.

A local study conducted in 1998 concluded that:

“while government and non-government organizations are undertaking programs to raise awareness of the populace in general, workplace programs to raise the level of awareness of workers specifically seafarers have to be undertaken. The existing programs particularly the pre-departure orientation seminars have to be revised to include discussions of occupational safety and health particularly the risks of getting STD/HIV/AIDS. Likewise the development and dissemination of information materials will lessen misconceptions and provide seafarers with relevant information.”

Eleven years after this study was conducted the rate of STD/HIV among our seafarers remains remarkably low. Could these educational programs have played a part in helping to keep the disease rate low?

Furthermore, it is interesting to note the extent to which the awareness campaigns have evolved since these early efforts. In 2008, a newspaper article announced the following:

“...the Seamen's Wives group has organized a 'Women's Seminar on Health and HIV/AIDS Prevention' in time for World AIDS Day on December 1. The whole-day seminar workshop hopes to educate the families of seafarers on their particular vulnerability to HIV infection, and train them to deal with the crisis. Among the topics to be discussed are: preventive strategies on HIV/AIDS; practical measures to support behavioral change; communication strategies on negotiating safe sex; guidelines and precautions on infection control; and safe and healthy sex.”

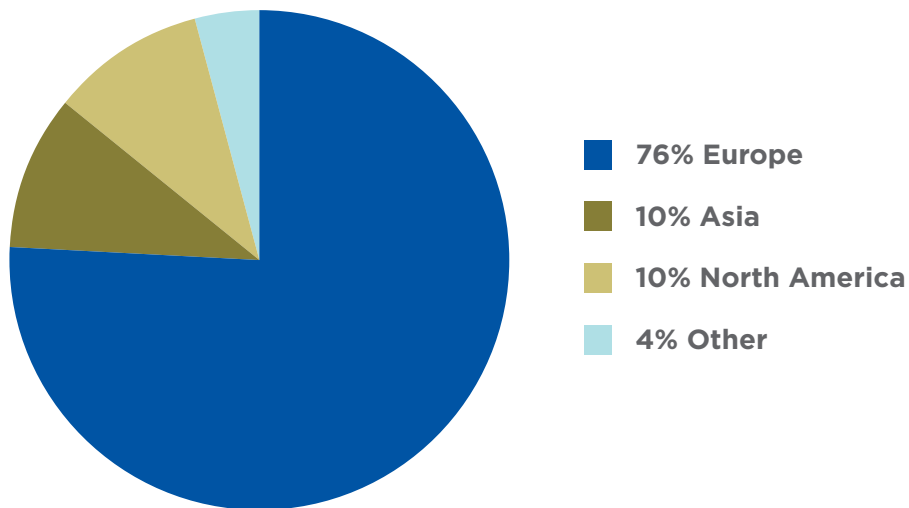
Therefore, for all it's worth, full-on educational campaigns must continue in earnest in order to help eliminate at least one of the risks and dangers our Filipino seafarers face while at sea. The aim is for the message to continue to spread, and not the disease.

Important information for seafarers and shipping companies is available free of charge thru ICSW/SHIP.

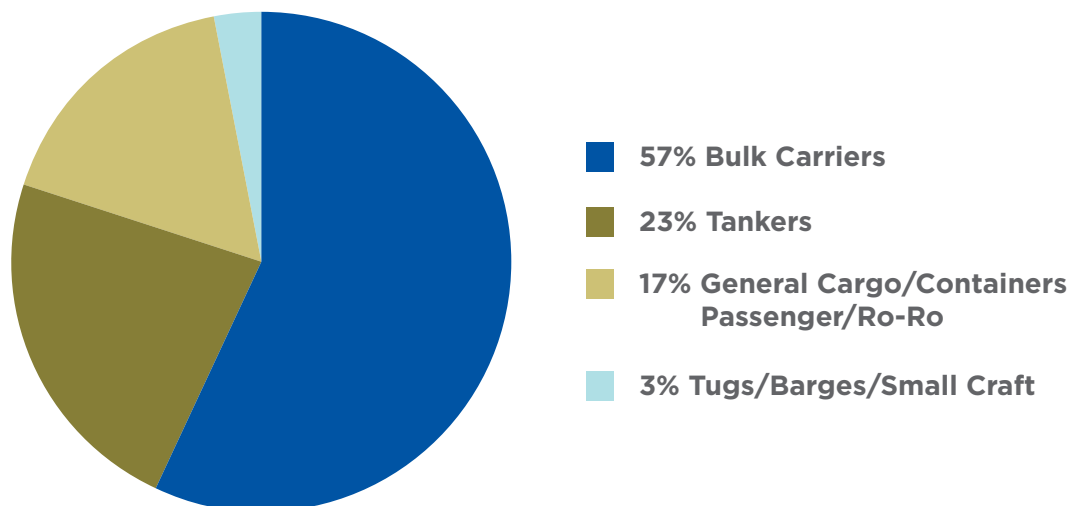
Their brochure on STD and HIV can be accessed thru this link: http://www.seafarershealth.org/documents/A5brochure22NOV_LOW_RES.pdf

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