CURRENTS

Issue Number 38 - December 2016

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Above:

The statue of Leif Erikson in Reykjavik, Iceland

Leif Erikson (970-1020) was a Norse (Icelandic-Norwegian) explorer and the first known European to have discovered North America in the year 1000, known as Vinland to the Vikings (the land of wine). Leif's voyage to America preceded the Christopher Columbus' voyage by roughly half a millennia and encouraged other Norsemen to also make the journey. The statue was designed by the American sculptor Alexander Stirling Calder and was a gift from the United States to Iceland to commemorate the 1000 year anniversary of Alþingi, the parliament of Iceland. A copy of the statue stands by the entrance to the Mariners' Museum in Newport, Virginia.

Cover:
"Leisure ship opposed to cargo ship"
By: Consuelo Rivero

Color Code

- General Claims & Industry Information
- FD&D Corner
- Loss Prevention
- Correspondents' Corner

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INTRODUCTION

by: Joseph E.M. Hughes
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I write this foreword to this latest edition of ***Currents*** on the eve of a landmark year for the American Club. On February 14, 2017, the Club celebrates its one hundredth birthday, a date shared with St. Valentine's Day, appropriately symbolic for a members' mutual!

In celebration of its centennial, the Club has published a history of its first hundred years. It tells the story of the Club from its foundation as an exclusively US enterprise in reaction to sanctions placed on American shipowners by the British government during World War I, all the way to its present status as an international player with an unsurpassed global reach. It also traces the varying fortunes of the US merchant marine over the last century as well as the changing landscape of P&I insurance as it evolved into the formidable engine of financial security and service capability currently exemplified by the International Group.

The book was written by Dick Blodgett, a leading corporate historian, who has also completed histories of the New York Stock Exchange, JP Morgan Chase and Co., the Kohler Group and others. It is currently being distributed to Members, brokers and many other friends of the Club throughout the world. It makes for good reading – and not just for those with a particularly focused interest in the American Club: I commend it to the general reader, too.

Above all, the history of the Club is about the people who have shaped its destiny over the years and, in their different ways, made it what it is today. As they have always been, people remain the Club's most important asset: from the Members themselves who provide their essential support, to the Directors who supervise its activity on behalf of those Members, and to the Managers who carry out its daily functions ensuring service delivery throughout the world, a circle of cooperation and shared interest in the success of a common cause.

But this circle of cooperation is not the only one essential to the Club's success. Lying just beyond it is a circle represented by those who support the Club in other ways: the broking community, suppliers of legal and other expert services, correspondents, financial advisors, auditors and bankers, the regulators and rating agencies. These are equally essential relationships, having played an important role in the Club's past, and vital to its future achievements.

As holiday celebrations of different kinds in different communities draw near across the world, and the Club embarks on its one hundredth year of service to the global shipping community, we wish all the readers of this latest ***Currents*** the very best of good fortune both for the special year ahead and to those many others which lie beyond.

Joe Hughes

SEAMEN DO NOT HAVE TO GO TO SEA?

by: Boriana Farrar, LL.M.
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In a decision that will have a lasting impact on marine insurers and their shipyard insureds, a divided panel of the U.S. Fifth Circuit held that a vessel repair supervisor at a Houma shipyard qualified as a Jones Act seaman, *Larry Naquin, Sr. v. Elevating Boats, LLC*, 744 F.3d 927 (5th Cir. 2014).

Plaintiff, Larry Naquin, Sr., was employed as a vessel repair supervisor at his employer's shipyard facility in Houma, Louisiana. Naquin was not assigned to a particular vessel but instead spent 70% of his time repairing, cleaning, painting and maintaining lift-boat vessels at the shipyard. Ordinarily, he worked aboard lift-boats while they were moored, jacked up or docked in the shipyard canal. The remaining 30% of his time was spent working in the shipyard's fabrication shop or operating the shipyard's land-based crane.

On November 17, 2009, Naquin was operating the shipyard's land-based crane when the crane pedestal suddenly failed and toppled over onto a nearby building. Naquin himself was able to escape the crane house but not without sustaining a broken left foot, a severely broken right foot, and a lower abdominal hernia. Naquin's cousin's husband, another EBI employee, was crushed by the crane and killed. *Id.*

A jury held that Naquin was a Jones Act seaman and that EBI's negligence caused his injury, awarding him $1,000,000 for past and future physical pain and suffering, $1,000,000 for past and future mental pain and suffering, and $400,000 for future lost wages. EBI appealed, contending that Naquin was not a Jones Act seaman, that the district court provided erroneous seaman status jury instructions, that the evidence was insufficient to establish EBI's negligence, and that the court erred in admitting evidence of Naquin's cousin's husband death.

In a split decision, authored by Judge Eugene Davis and joined by Judge Milazzo, District Judge for the Eastern District of Louisiana (sitting by designation), the U.S. Court of Appeal for the Fifth Circuit affirmed the district court's judgment on seaman status and liability. The Fifth Circuit then vacated the damages award, because of the jury's improper reliance on emotional anguish resulting from the death of a third party.

Significantly, the Fifth Circuit upheld the jury's finding that Naquin was a Jones Act seaman, despite the fact that the vessels were usually docked, Naquin was not often exposed to the dangers of the sea, and he spent nearly every night in his own land-based home.

The Fifth Circuit rejected EBI's argument that ship repairmen are expressly included in the jobs listed in the Longshore and Harbor Workers' Compensation Act, and further noted that while the court had previously agreed with EBI's argument which was set forth in *Pizzitolo v. Electro-Coal Transfer Corp.*, 812 F.2d 977 (5th Cir. 1986), that decision was specifically overruled in this regard by the Supreme Court in *Southwest Marine, Inc. v. Gizoni*, 502 U.S. 81 (1991).

Judge Jones issued a strong dissent where she emphasized, that while Naquin's work contributed to the function of a vessel, his connection to the vessel(s) was not substantial. Judge Jones added: "if a jury could hold Naquin is a seaman, then it could so conclude as to any shore-based worker who maintained EBI's on-board computers or went aboard the lift-boats to gas them up before they left the repair yard." Judge Jones argued that the majority opinion did not properly interpret the concept of a "vessel in navigation" where Naquin was a dock worker who performed repairs to vessels at the dock. She points out that the majority's conclusion is irreconcilable with the "basic point" in the Supreme Court precedent, *Chandris v. Latsis*, 515 U.S. 347, 368 (1997) that land-based employees are not seamen.

EBI filed a third-party complaint against its insurers (State National Insurance Company (SNIC) and Certain London Insurers), which denied coverage for this accident. SNIC filed a motion for summary judgment, asserting that its protection and indemnity (P&I) policy did not cover the plaintiff's land-based accident. The trial court granted the SNIC's motion for summary judgment. EBI appealed. In considering EBI's appeal, the Fifth Circuit observed that the P&I policy language provided "[s]ubject to all exclusions and other terms of this Policy, the Underwriters agree to indemnify the Assured for any sums which the Assured, *as owner of the Vessel*, shall have become liable to pay, and shall have paid in respect of *any casualty or occurrence* during the currency of the Policy, but only in consequence of any other matters set forth hereunder …." *Naquin v. Elevating Boats, LLC*, 817 F.3d 235 (5th Cir. 2016) (Emphasis in original).

The insurer argued that the language "as owner of the vessel" limited the policy's coverage to situations involving a vessel and did not extend to a land-based accident such as the one involved in this litigation. EBI focused on the "any casualty or occurrence" language in arguing for more expansive coverage. The court looked to precedent in *Lanasse v. Travelers Ins. Co.*, 450 F.2d 580 (5th Cir.1971), which explained that "[t]here must be at least some causal operational relation between the vessel and the resulting injury. The line may be a wavy one between coverage and noncoverage, especially with industrial complications in these ambiguous amphibious operations…. But where injury is done through nonvessel operations, the vessel must be more than the inert locale of the injury." The court concluded that "[w]here there is no causal operational relation between the vessel and the resulting injury, there is no extension of coverage for liability." *Naquin v. Elevating Boats, LLC*, 817 F.3d 235 (5th Cir. 2016) (citation omitted).

The Fifth Circuit held that an injured vessel repair supervisor (Naquin) who spent 70% of his time on land is a seaman. In a subsequent decision, the Fifth Circuit affirmed that a P&I policy requires a causal connection between the insured vessel and the resulting injury for purposes of coverage but found no causal operational relation between the vessel and Naquin's injury and held that there was no coverage under the applicable P&I policy.

Ultimately, the Fifth Circuit concluded that the accident involved in this litigation "in no way arose" out of EBI's ownership of a vessel because the land-based crane did not break on even in close proximity to a vessel. The court held that Naquin's accident did not arise out of EBI's conduct as "owner of the Vessel" where EBI's negligence was based on its defective welding of the crane to its base and the land-based crane did not break on or even in close proximity to a vessel. There was no causal operational relation between the vessel and Naquin's injury and therefore the Fifth Circuit held that there was no coverage under the P&I policy.

In sum, the Fifth Circuit affirmed the district court's grant of summary judgment, including the dismissal of claims against the insurer for bad faith. This decision affirms the fundamental requirement that P&I risk in question arise out of the insured's capacity as owner of the new vessel and that a P&I policy generally requires a causal connection between the insured vessel and the resulting injury for purposes of coverage.

We thank Sidney W. Degan, III and Philip Brickman from Degan, Blanchard & Nash LLP for their contribution to this article.

THE "YANGTZE XING HUA" - A VESSEL BEING USED AS A "FLOATING WAREHOUSE" UNDER THE ICA

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A recent case "*The Yangtze Xing Hua*" (Transgrain Shipping (Singapore) Pte Ltd –v-Yangtze Navigation (Hong Kong) Co Ltd [2016] EWHC 3132) involving damage to cargo addresses the question of what is meant by the word "act" found in clause 8 of the Inter Club Agreement (ICA) 1996 when apportioning liability between Owners and Charterers for claims falling within the ICA 1996.

The Claimants were the Owners of the "*Yangtze Xing Hua*" (the "Vessel") who chartered out the Vessel on a time charter trip basis to the respondent Charterers. The Vessel loaded a cargo of soya bean meal from South America to Iran. The Vessel arrived off the discharge port in Iran in December 2012. As the Charterers had not been paid for the cargo, they ordered the Vessel to stay off the disport for over 4 months, effectively utilising the Vessel as a "floating warehouse". Unsurprisingly, when the cargo of soya bean meal was discharged it was found damaged in two of the Vessel's six holds and the receivers brought a claim, which the Owners negotiated and paid. The Owners then brought a claim against Charterers under the ICA provisions in the charterparty.

The damage was found to have resulted from a combination of the inherent nature of the cargo and the fact that it had remained on board the Vessel for a prolonged period. The Vessel was not found to be at fault.

The matter was referred to arbitration and the tribunal held that: (1) the claim fell under clause 8(d) of the ICA as an *"other cargo claim"*; (2) neither party was at fault and (3) apportionment of the cargo claim was not a 50/50 split but was 100% Charterers liability as it arose from an "act" of the Charterers in ordering the Vessel to remain off the disport for a prolonged period of time.

The commercial court confirmed the tribunal's decision. The main thrust of Charterer's argument was that clause 8(d) of the ICA 1996, in order to make one party 100% liable, required proof of *"act or neglect"* and that the word "act" should be read as meaning fault. As such, Charterers argued that the "act" of the Charterers in ordering to remain off the port did not amount to fault and Charterers should only be liable for 50% of the claim. This argument however was rejected by the court who considered that clause 8 is to be applied as a mechanical apportionment of liability and the word "act" was to be read using its natural and ordinary meaning and without requiring fault.

This case therefore serves as a useful confirmation that damage to a cargo which is caused by the prolonged stay of the vessel at the port at the express orders of the Charterers firstly, (and not by any fault of the vessel) will be treated as a cargo claim falling under the sweep up clause 8(d) of the ICA 1996 and secondly, such orders will be treated as an "act" of Charterers making them 100% responsible for such claims. The 2011 amendments to the ICA do not, in the opinion of the writer, affect this conclusion.

It may often be a common assumption that the incorporation of the ICA into a Charterparty does not affect the Owners obligations concerning the provision of a seaworthy vessel and the potential right to use the Hague/Hague Visby rule exceptions to liability when the rules have been incorporated into a charterparty (typically by a "Clause Paramount"). However, as a passing comment of the judge, the case also confirms that, where the ICA is incorporated into a charterparty, if the damage arises out of the unseaworthiness of the vessel or an error in navigation or management of the vessel then the Owners will be 100% responsible without any defence available to the Owners that "due diligence" was exercised to make the vessel seaworthy. Further, that the Owners cannot rely on an exceptions clause in such circumstances, which the writer thinks would include for example, where the Hague/Hague Visby rules are expressly incorporated into a charterparty and Owners then wish to argue that the defence of crew negligence applies against a claim for cargo damage due to unseaworthiness, if the negligence in question is related to navigation or management of the vessel.

THE "CORAL SEAS" - OWNERS' LIABILITY FOR UNDERPERFORMANCE DUE TO UNDERWATER FOULING

FD&D CORNER

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The UK Court of Appeal's decision in July 2016 in *The Coral Seas*[1] is one which Owners should have in mind when negotiating speed and consumption clauses in charterparties. Charterers succeeded with deductions for speed and consumption claims where performance was impaired as a result of bottom fouling following relatively lengthy stays in warm water ports in accordance with Charterers' instructions.

The case shows where the line is drawn between Owners' entitlement to an indemnity for complying with Charterers' orders and Owners' maintenance obligation. It is best understood by asking the question whether the risk of bottom fouling due to a prolonged stay in warm waters was a foreseen and foreseeable risk which Owners had agreed to bear.

FACTS

The Coral Seas charterparty included the following rider clause at 29(b):

> *"Throughout the currency of this Charter, Owners warrant that the vessel shall be capable of maintaining and shall maintain on all sea passages…an average speed and consumption as stipulated in Clause 29(a) above, under fair weather condition…"*

In accordance with the sub-charterers' instructions, the vessel waited for a berth in tropical waters off Brazil for almost a month. This led to fouling of the bottom and propeller with barnacles. The vessel's performance fell off significantly. Charterers deducted from the hire in accordance with clause 29(b).

ARBITRATION

Owners argued that the underperformance resulted from compliance with the Charterers' orders and commenced LMAA arbitration to recover the balance on final hire.

The arbitrators found that the marine growth could not be regarded as unusual or unexpected but constituted fair wear and tear incurred in the ordinary course of trading. The arbitrators further determined that the speed warranty in clause 29(b) applied to all sea voyages, including those after a prolonged wait in tropical waters, and that it was the Owners who had assumed the risk of a fall-off in performance as a result of bottom fouling consequential upon compliance with lawful orders.

APPEAL

The Owners appealed to the Commercial Court. They referred to *Time Charters*, 7th Edition, 2014, para 3.75 which reads that:

> *"Where the owners give a continuing undertaking as to performance of the ship, and the ship has in fact underperformed, it is a defense for the owners to prove that the underperformance resulted from their compliance with the charterers' orders..."*

The Court of Appeal held that the speed warranty in clause 29(b) related to the vessel's actual continuing performance. The contention that the continuing performance warranty did not apply where the vessel's performance fell off because of fair wear and tear in the course of contractual trading would be rejected.

[1] Imperator I Maritime Co v Bunge SA [2016] EWHC 1506 (Comm); [2016] 2 Lloyd's Rep 293

The Court found that the wording in *Time Charters* was too wide. Where a vessel had underperformed, it was not a defense to a claim on a continuing performance warranty for the Owners to prove that the underperformance resulted from compliance with the Time- Charterers' orders unless the underperformance was caused by a risk which the Owners had not contractually assumed and in respect of which they were entitled to be indemnified by the Charterers. The appeal was dismissed.

DISCUSSION

This decision is not surprising given the result in *The Kitsa* [2005] 1 Lloyd's Rep 432. In that case the vessel remained at an Indian port for over three weeks. The vessel's hull became seriously fouled by barnacles and the owners subsequently undertook de-fouling work.

Owners' claim for hire and the costs of de-fouling failed. The arbitrators concluded that the risk of the vessel suffering hull-fouling by being inactive at a warm water port for 22 days as a result of a legitimate order of the charterers as to the employment of the vessel was something that was foreseeable and foreseen by both sides at the time the charterparty was made. The risk that the vessel's performance would suffer as a result of hull fouling and that the owners would have to clean her hull as soon as they could were also foreseeable and foreseen by both parties at the time the charterparty was concluded. Owners' appeal was dismissed.

The law is therefore, relatively clear. If the length of the stay is within normal expectations owners will not be able to rely on it if the vessel becomes fouled and performance is impaired. There is, however, scope for argument about how long the stay would have to be for it not to be foreseeable and foreseen.

In order to mitigate effect of these decisions, we recommend that Owners insert a clause in their charterparties on the following lines:

> *In the event that Charterers require the vessel to remain anchored, berthed or drifting in [tropical/sub-tropical/ warm waters] for in excess of [xx] days Charterers shall not be entitled to make any speed or consumption claim until the vessels bottom/propeller have been cleaned to Owners' reasonable satisfaction and Charterers shall indemnify Owners for the reasonable costs of bottom/ propeller cleaning required as a result of compliance with Charterers' instructions.*

Photo by: Christos Gouliamakis, Bureau Veritas, Greece

MAGELLAN SPIRIT APS v. VITOL SA [2016] EWHC 454 (COMM.)

Pitfalls of anti-suit applications against parties not bound by the charterparty terms

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Anti-suit applications can be a very useful measure in protecting rights under charter party terms agreed when defending disputes being brought in jurisdictions outside of such terms. However, it is very important to make sure you cover all the bases when attempting to enforce. A recent case, relating to the application by the Owner of the vessel "Magellan Spirit" for an anti-suit injunction in *Magellan Spirit ApS v. Vitol SA* [2016] EWHC 454 (Comm.), demonstrates the importance given by the English courts on the factual evidence presented by the applicant as well as the promptness of the applicant in bringing his application.

The plaintiff, owner of the vessel "Magellan Spirit" (the "Owner") applied to the English High Court (Commercial Court) (the "Court") for an anti-suit injunction to restrain the defendant Vitol S.A., a Swiss trading company within the Vitol Group (the "Supplier") from suing the Owner in Nigeria on the ground that the parties had agreed to refer the dispute to the jurisdiction of the High Court in London. The Supplier cross-applied for a declaration that the English court had no jurisdiction to try the Owner's claim in the action.

The central issue in this case was whether there was an agreement conferring jurisdiction on the English High Court which satisfied Article 23 of the Lugano Convention (the "Convention") establishing the existence of a contract under which the Supplier had agreed not to sue the Owner in any forum other than England.

The Supplier, entered into a long-term contract for the supply of liquefied natural gas to Korea Midland Power Company, and the "Magellan Spirit" (the "Vessel") was chartered by Mansel Limited, a Bermudan company in the Vitol Group (the "Charterer"). The time charter was expressly governed by English law and provided for disputes arising under it to be referred to the jurisdiction of the High Court in London. When leaving port, the Vessel became grounded and she was delayed until she was ready to continue her voyage. The Supplier alleged that, because of the delay, the cargo could not be used to fulfill the Supplier's obligations under its liquefied natural gas supply contract. The Owner was subsequently informed that the Supplier had issued proceedings against it in Nigeria under the bill of lading, which the Owner sought to block by applying to the Court for an injunction.

There was no disagreement about the legal principles which govern the parties' respective applications, and the Owner's case had been put on three grounds:

i) The Charterer entered into the charter as agent of the Supplier with the result that the Supplier was bound by the terms of the charter, including the English law and jurisdiction clause; or

ii) Alternatively, the bill of lading should be rectified to incorporate the terms and conditions of the charter, including the English law and jurisdiction clause; or

iii) In the further alternative, there was a free-standing jurisdiction agreement between the Owner and the Supplier under which the Owner had agreed to refer the dispute to the exclusive jurisdiction of the English court.

In relation to the Owner's first ground, Owner alleged that the Charterer entered into the charter as agent of the Supplier and consequently the carriage of the cargo was solely governed by the charter and the bill of lading on which the Supplier was relying on in the Nigerian proceedings was merely a receipt for the goods. The Court found that there was nothing in the terms of the charter to suggest that the Charterer was entering into it as an agent of the Supplier or as an agent at all. Furthermore, even though the purpose of chartering the "Magellan Spirit" was solely to carry cargoes bought and sold by the Supplier and with the intention that the Charterer would make no profit and suffer no loss from chartering the Vessel, the Court found that the time charter was just what it appeared on its face to be: namely, a contract made by the Charterer dealing as a principal. According to the Court, the most obvious method of proof would be to point to an express agreement establishing an agency relationship. Mr. Justice Leggatt concluded that in the present case, however, no relevant written agreement between the Charterer and the Supplier existed and there was no evidence of any relevant oral agreement to indicate otherwise.

In relation to the Owners' second ground, Owner asserted that an English jurisdiction agreement was made between the Owner and the Supplier when the bill of lading was issued for the cargo. The Court found that the terms of the time charter between the Owner and the Charterer were not incorporated in the governing bill of lading nor were there any other words on the front or back of the bill of lading which evidenced an agreement to refer disputes under the bill of lading to the jurisdiction of the English courts. Mr. Justice Leggatt therefore rejected the Owner's argument and concluded that the bill of lading contract between the Owner and the Supplier did not include a term conferring jurisdiction on the English court.

In relation to the Owner's third ground, the court had to decide on whether a freestanding agreement was made between the Owner and the Supplier that any dispute arising out of the carriage of the Supplier's cargoes by the vessel should be governed by English law and subject to the jurisdiction of the English High Court. The Owners argued that a consensus between the Owner and the Supplier that the English High Court should have jurisdiction to settle any disputes arising from their relationship was established during the negotiations for the charter which, even if it did not amount to a binding contract, was still sufficient to confer jurisdiction on the English Court. The Court found that even if such a consensus could be demonstrated, however, it would not provide a basis for granting an anti-suit injunction. A non-contractual consensus which satisfied the requirements of Article 23 of the Convention would confer jurisdiction on the English court and hence enable the Owner to bring proceedings in England, but it would not give the Owner any legal right not to be sued in Nigeria (which is not a member state for the purposes of the Convention). To establish such a right, the Owner needed to show that there was a legally binding contract of which the Supplier's suit against the Owner in Nigeria constitutes a breach. It was clear to the Court that no such contract – and indeed no legally binding contract at all – was made during the negotiations which preceded the execution of the charter.

Mr. Justice Leggatt went further to rule that even if on the material available he had reached the conclusion that the Court had jurisdiction to try the Owner's claim and that the claim is well founded, he would still have refused the Owner's application for an injunction. This was because there was, in his view, fatal delay in making the application and he explained that the English court need feel no diffidence about granting an anti-suit injunction, provided that it is sought promptly and before the foreign proceedings are too far advanced. Nevertheless, in this case the Owner's application was brought more than five months after the initiation of the Nigerian proceedings. The significance of the delay was compounded by the fact that in the meantime the Owner became actively engaged in the Nigerian proceedings. The Owner had already filed its defense in the Nigerian proceedings, without any application being made to the English High Court to prevent the Defendant from pursuing the Nigerian proceedings and without anything being said to the Nigerian court to suggest that the Owner might be contemplating making such an application. In these circumstances the Court considered that the Owner had allowed the Nigerian court to become seized of the matter to an extent which would make it inappropriate for the English court to intervene at that stage.

Thus, while Anti-suit injunctions provide a measure for contracting parties to enforce the agreed jurisdiction clauses, contracting parties must ensure all requirements are met for enforcement. First and foremost there must be a contractual term agreed with the specific party against which an injunction is being sought. Second, if no direct contract, any basis of agency must be expressly agreed. Thirdly even if there is a non-contractual consensus conferring jurisdiction, it would still not confer any legal right not to be sued in another appropriate contractually agreed jurisdiction. Finally, another aspect to beware of is delay in making an application. Once a contractual party actually takes active part in another jurisdiction's legal proceedings without protest or referral to the English Court, this would be fatal to an application brought later in the English Court.

MAKE SAFETY MEETINGS GREAT AGAIN!

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Introduction

Hazardous conditions that lead to a casualty can present themselves at any time. An experienced Master understands that the crew must be prepared for such events. Onboard safety meetings are a vital aspect of any successful safety management system program to effectively manage risks. These formal gatherings allow employees to reinforce good shipboard practice relevant to safety and environmental protection in compliance with the ISM Code and other regulatory requirements, and ultimately promote a positive safety culture.

Furthermore, the safety meeting is a good opportunity to address the company's training objectives and allow crew members to share their knowledge and experience in an open forum with their shipmates. Safety meetings should be an interactive and constructive experience that allows the crew to openly report any safety, security and environmental protection related concerns and discuss relevant preventative measures.

From the American Club comic pamphlet, Shipboard Safety.

Keep safety meetings interesting!

How often do we find ourselves nudging a shipmate who is desperately trying to stay awake during a safety meeting or maybe even dozing off ourselves? The way in which we communicate about safety onboard ship influences the attitudes and behaviors of those aboard ship and drives a "safety first" work ethic where the crew understands and participates in the safety process. The following are examples of ways to add variety and keep safety meetings fun and engaging:

- *Have a friendly competition.* Consider offering crewmembers incentives for relevant contributions and participation at the safety meetings.
- *Add some humor.* Consider starting the meetings by telling a joke or a story that goes along with the topics of safety meeting.
- *Utilize publications or videos to supplement your safety meetings.*

Safety is our Business

The American Club's loss prevention tools are a great way to supplement your safety meeting discussions and shipboard training. Cartoons and animations make it easier to visualize the hazards onboard a ship. Here are a few ideas for incorporating American Club loss prevention materials into your routine safety meetings:

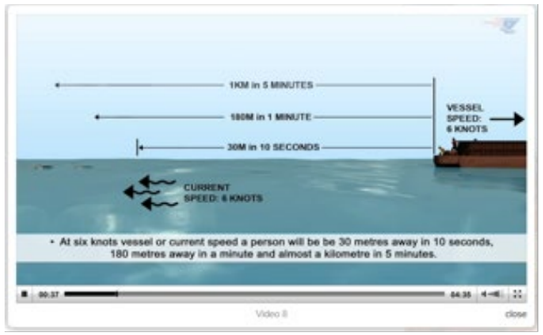
- **Comics:** The witty George and Ragnar help bring awareness in *Protecting the Marine Environment*, *Shipboard Safety*, and *Preventing Fatigue*. The comics can be handed out at safety meetings or used electronically in a presentation.

- **Incident case studies:** Case studies provide many benefits for safety training. They allow trainees to problem solve by examining information, considering alternatives, and deciding what the safest course of action is to take. The American Club issues slips, trips and falls and machinery damage case studies that are periodically posted to the Club's website. Also available is the American Club case study video collection including the entry into enclosed spaces and bridge resource management when pilots are on the bridge.
- **Posters:** With colorful graphics and a bit of humor, our posters bring to light a number of safety topics including security, oil pollution, lifesaving equipment, entry into confined spaces and more. American Club posters provide a great training tool and can be used for, "what is wrong with this picture?" type exercises.
- **Man Overboard!:** This collection is mainly applicable to tug and barge operations and is comprised of seven clever posters and ten animations of approximately three to five minutes each. These animations are a great way to illustrate and reinforce safe practice during critical tug and barge activities.

Poster for enclosed space entry

Nothing "trumps" safety!

Success of the safety management system starts from the top. Empowering employees to use creative ideas on how to communicate your safety program is sure to go a long way! Members are reminded that all of the Club's loss prevention materials and access to e-Learning training tools are available electronically via flash drives and/or hardcopies upon request at no additional cost! A summary of all of our loss prevention tools and services can be found at http://american-club.com/page/loss-prevention.



Screenshots from the American Club's Man Overboard!

JURISDICTION OVER MARITIME DEFENDANTS LIMITED

THE CORRESPONDENTS' CORNER

by:
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The United States Supreme Court's 2014 decision in *Daimler AG v. Bauman* has made it harder for courts to exercise personal jurisdiction over maritime defendants. Personal jurisdiction is the power of a court over the parties. Before a court can exercise personal jurisdiction, the Constitutional doctrine of due process requires that the party have certain minimum contacts with the forum in which the court sits.

In general, a court may find "minimum contacts" exist in one of two ways:

(a) specific jurisdiction, which exists in the forum from which the cause of action arises or which is directly related to the defendant's actions within the forum; and

(b) general jurisdiction, which applies regardless of where the cause of action arises.

Daimler affirms that general jurisdiction extends beyond an entity's state of incorporation and principal place of business only in the exceptional case where its contacts with another forum are so substantial as to render it "at home" there. In other words, a court may not exercise general jurisdiction over a foreign corporation unless the corporation's activities in the forum closely approximate the activities that ordinarily characterize a corporation's place of incorporation or its principal place of business.

In *Daimler*, the plaintiffs sued a German company in California under a theory of general jurisdiction. The Ninth Circuit found that Daimler AG was subject to general jurisdiction. The Supreme Court reversed. After acknowledging that Daimler's subsidiary does business in California through "multiple California-based facilities," the Court noted these contacts would not support general jurisdiction of Daimler even if it were assumed the subsidiary's contacts could be imputed to Daimler. Such a standard, which would permit "the exercise of general jurisdiction in every State in which a corporation engages in a substantial, continuous, and systematic course of business[,] . . . is unacceptably grasping." The Court additionally noted the place of incorporation and principal place of business are paradigm bases for general jurisdiction as these affiliations "have the virtue of being unique—that is, each ordinarily indicates only one place—as well as easily ascertainable." The Court added that in a transnational context, federal courts must also heed to principles of international comity and should not employ an expansive view of general jurisdiction.

While *Daimler* did not foreclose the possibility that in an exceptional case a corporation might be subject to jurisdiction outside its home forum as defined by incorporation and headquarters, it did not endorse that possibility. The only case the Court cited as an example of "exceptional circumstances" was *Perkins v. Benguet Consol. Mining Co.*, in which the defendant had fled the Philippines during World War II and made the forum state its "principal, if temporary, place of business."

A survey of post-*Daimler* maritime cases shows that courts have applied Daimler to find an absence of personal jurisdiction over foreign defendants not "at home" in the forum. In *Carmouche v. Tamborlee Mgmt., Inc.*, a cruise ship passenger brought suit in Florida against Tamborlee, a Panamanian- based corporation, for injuries allegedly sustained during a shore excursion tour that Tamborlee operated in Belize. Tamborlee's connections with Florida included insurance policies with several Florida companies, a bank account with Citibank handled by a department in Miami, membership in a Florida non-profit trade organization, and contracting with Carnival Corp. to provide shore excursions for Carnival passengers in Belize, which included a forum selection clause providing for the Southern District of Florida. The Eleventh Circuit Court of Appeals concluded these connections were not so substantial as to make this one of the exceptional cases in which a foreign corporation is at home in a forum other than its place of incorporation or principal place of business.

And in *The Asbestos Products Liab. Litig. (No. VI)*, the court dismissed a number of defendants in a maritime multidistrict asbestos suit although the plaintiffs alleged the defendants had substantial operations in the forum, including ownership of terminals. The court found that the plaintiffs failed to adequately plead facts which would allow the court to exercise general jurisdiction over any of the defendants under the restrictive holding in *Daimler*.

Further, in *Gonzales v. Seadrill Americas, Inc.*, the court found that it did not have jurisdiction to hear the suit by two offshore oil rig workers' claims against a Mexican helicopter charter service. The plaintiffs argued the defendant's subsidiaries' contacts with the forum allowed them to sue there. The court reasoned that under *Daimler AG* a subsidiary being "at home" in the forum state does not automatically subject the parent to general jurisdiction.

In sum, consistent with *Daimler*, courts have adopted a restrictive approach to jurisdiction. *Daimler* has produced an opening for corporations to manage certain litigation risks by determining where to house those risks in their corporate structure. In *Daimler's* wake, litigants will find it increasingly difficult to forum shop their claims. Except where there is specific jurisdiction, *Daimler* will limit litigants' pursuit of their claims to those forums in which defendant is "at home."

The United States Supreme Court's 2014 decision in Daimler AG v. Bauman has significantly limited where potential claimants may sue maritime companies for claims unrelated to the company's activities in a state. Under Daimler, a foreign corporation cannot be subject to general jurisdiction in a forum unless the corporation's activities in the forum closely approximate the activities that ordinarily characterize a corporation's place of incorporation or principal place of business.

New Club Publications & Initiatives

IMO Kids

The International Maritime Organization (IMO) launched a new, kid-friendly website, with specially-commissioned animation to explain to the younger generation how IMO works to protect the environment and the atmosphere.

By clicking on colorful links, the children can find material related to the protection of the atmosphere; dealing with waste; clean oceans; invasive species; particularly sensitive sea areas; and protecting marine life from noise pollution.

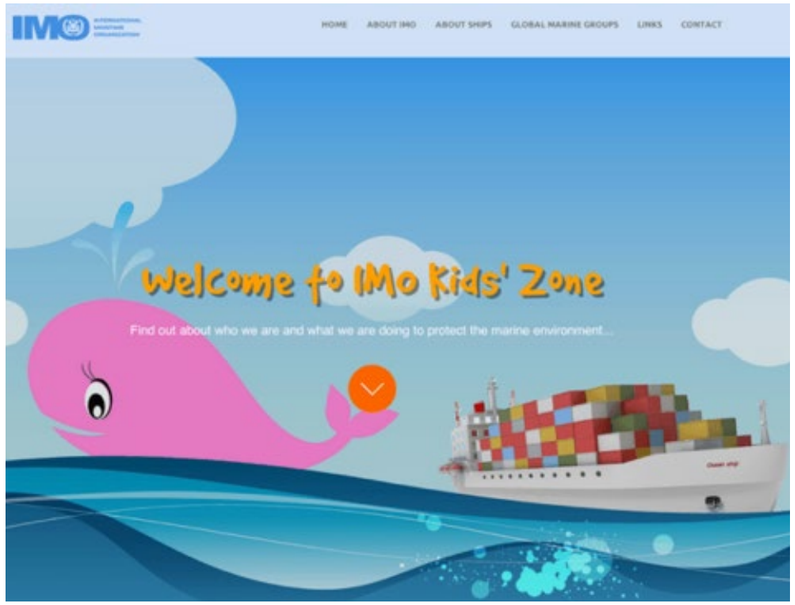
The development of the website was partly funded by the Global Partnership for Marine Litter (GPML), for which IMO is co-leading on activities related to sea-based sources of marine litter, together with FAO.

With this website, young people not only acquire basic knowledge of the industry, but also learn about current initiatives for kids around the world and participate in efforts towards the protection of the marine environment. This initiative aims to nurture awareness for the protection of our oceans at an early stage by explaining to children which are the pollution sources and what measures have been taken to reduce pollution and increase maritime safety.

We are particularly proud that the American Club's ***"Protecting the Marine Environment"*** comic book was among with materials featured from Governmental and non-Governmental Organizations.

You can find out more by exploring with your kids IMO's new website http://kids.imo.org/

Source: International Maritime Organization



The International Maritime Organization (IMO) is a specialized agency of the United Nations. IMO's role is to develop international regulations and standards aimed at making shipping safe across the world's oceans and minimizing any possible pollution from ships.

Transport Guidance for Steel Cargoes

The American Club is very happy to announce the publication of its transport guidance for steel cargoes.

The handling of steel cargoes has been a perennial focus of P&I loss prevention activity. Their susceptibility to pre-loading, stowage and post-discharge damage, and the difficulties of dealing with attendant claims, have been a special concern for clubs from at least the 1970s.

In earlier times, initiatives to deflect or mitigate losses arising from damage to steel were more rudimentary than they are today. Many of these precautionary measures – a requirement for pre-loading surveys, for proper clausing of bills of lading and so on – are still part of best practice. However, in expanding on the principle of prevention being better than cure, this ***Transport Guidance for Steel Cargoes*** seeks to provide a comprehensive overview of how to avoid claims arising from the carriage of these cargoes from a variety of related perspectives.

This guidance draws upon the knowledge and experience the American Club has derived from its own claims, from those who are engaged in the operation and/or chartering of vessels for the carriage of steel cargoes, and from surveyors regularly instructed to attend steel cargo loadings and discharges. Furthermore, the Guidance is supplemented by a series of useful visual animations on the subjects of ship and cargo sweat, dunnage, lashing and securing, steel coils and guidance on do's and don'ts for transport of steel cargoes.

Members are encouraged to refer to the Club's website where the Guidance and animations and other relevant information can be found at:

http://www.american-club.com/page/steel-cargoes

Hardcopies of ***Transport Guidance for Steel Cargoes*** are also available to Members free of charge upon request. The Club will also be releasing versions in the Guidance on our website in both new and traditional Mandarin in January 2017.

The American Club Supports isalos.net Initiative

The American P&I Club is a proud supporter of ***isalos.net*** initiative which promotes marine and maritime education. This initiative was launched by Naftika Chronika maritime magazine in order to connect the maritime community with the younger generation and provide the latest insights and trends on the marine and maritime profession. At the same time, ***isalos.net*** organizes educational events and visits on a monthly basis to support these objectives.

At the American Club, we wholeheartedly support all such initiatives which empower the next generation of maritime professionals.

isalos.net
Go Maritime Initiative

THE AMERICAN CLUB BoD MEETING & MARKET PRESENTATION
NOVEMBER 2016 - HOUSTON, TX, USA

The Club's Managers were pleased to welcome the maritime community of Houston at a market presentation to update them on the Club's latest developments and news. The event was well attended by Members, brokers and industry leaders, especially from the local maritime community. Also, the Board of Directors of the American Club took the opportunity to convene for their November Meeting.

Arnold Witte, *Chairman of the Board, The American Club,* addresses the guests

CLUB LOSS PREVENTION WORKSHOPS
OCTOBER 2016 - ATHENS, GREECE

The American Club was pleased to welcome our members for loss prevention workshops and seminars during the month of October in Greece. The discussions presented by Dr. William Moore, Executive Vice President of Loss Prevention included: Pre-employment Medical Evaluations (PEMEs); transport guidance for bagged rice cargoes; guidance for calling ports in the USA and Greater China; shipboard safety; collisions and groundings and American Club's library of e-learning tools. Dr. Moore was joined by Dorothea Ioannou, Managing Director of SCB Hellas and Danielle Centeno Asst. VP Loss Prevention/Survey Compliance and the local teams. The seminars also provided an opportunity for the managers to debut the newly released Transport Guidance for Steel Cargoes booklet and animations.

The seminars were well attended and met with excitement by all in attendance. We look forward to welcoming everyone again in the near future.

CLUB ANNUAL MARKET PRESENTATIONS
DECEMBER 2016 - PIRAEUS, GREECE & LONDON, UK

The American Club held their traditional December pre-Christmas gatherings for the Greece and UK maritime communities filling the Piraeus Marine Club and Trinity House to maximum capacity. Joe Hughes presented the Club's year in review, Vince Solarino spoke of its latest developments and progress, and Dorothea Ioannou made a brief presentation on the global team and business philosophy. Ilias Tsakiris gave an update on the progress of the American Hellenic Hull Insurance Company, Ltd., (Cyprus).

Joe Hughes

Vince Solarino

Dorothea Ioannou

Ilias Tsakiris

AMERICAN CLUB EVENTS

AMERICAN CLUB EVENTS

THE AMERICAN CLUB ORGANIZES THE FIRST "P&I" BEACH CLEAN-UP IN GREECE
OCTOBER 2016 - KAVOURI, GREECE

On Sunday, October 2, 2016, the American P&I Club in cooperation with HELMEPA and in celebration and honor of Ocean Conservancy's 2016 International Coastal Clean-up, attracted over 80 volunteers representing members, associates and executives from the Greek shipping sector, along with their families, for a beach cleaning event at Kavouri beach as a part of the voluntary actions' campaign of HELMEPA for the marine environment that takes place every September. Beyond taking steps to evidence the difference individuals can make with respect to protecting the marine environment, the initiative will be valuable from a scientific perspective based on the data that was collected by the participants documenting findings from the clean-up.

CLUB MARKET PRESENTATIONS IN ASIA
OCTOBER 2016 - HONG KONG, TAIPEI & SHANGHAI

"American Club & AHHIC set sail in Greater China"

The American Club's Managers hosted their traditional market presentations in China during the month of October. Joe Hughes reported on the status of the American Club and EOM facilities followed by Ilias Tsakiris of American Hellenic Hull Insurance Company presenting the company to the Greater China market. The seminar topics that followed included the risks of using low sulphur fuels, ship arrests in popular jurisdictions, IG reinsurance, and the grounding and wreck removal of the "FEDRA" presented by our Shanghai and New York staff, Dr. William Moore, Dimitris Seirinakis, Katherine Wang and Yelin Tang.

AMERICAN CLUB EVENTS

THE AMERICAN CLUB – TRAINING SEMINAR
DECEMBER 2016 - BELAWAN, INDONESIA

On December 7 & 8, 2016 the American Club held Training seminars for the seagoing personnel of our member, Waruna Group, at Waruna Shipyard in Indonesia. The seminar was presented by John Wilson of our Hong Kong office and the topics presented at this interactive seminar included Navigation, Cyber risk, Loss prevention, Tanker shortage claims, and The American Club's eLearning Tools. The interactive seminar was met with excitement by all in attendance and we look forward to welcoming everyone again in the future.

"We believe that the seminar provided an enriching experience for all our participants."

Capt. Asbar Barrang

DPA / CSO, PT. WARUNA NUSA SENTANA

“IN THE SPOTLIGHT”

2016 New York Maritime Forum (NYMF)

September 2016 – Metropolitan Club, New York, USA

Joe Hughes featured on current trends in Marine Insurance. The panel was moderated by Boriana Farrar.

IBA Annual Conference 2016

September 2016 – Washington, DC, USA

Muge Anber-Kontakis was a speaker at the joint session of the Oils & Gas and Maritime & Transport Law Committees and presented the P&I insurer's viewpoint in a dried-out Oil Market.

Salvage & Wreck Asia 2016 Conference

September 2016 – Singapore

John Wilson featured on the insurance concerns for the transportation of bauxite, nickel ore and iron ore cargoes. John also took part in a Round Table that discussed the mis-declaration of container contents and how this problem can be solved.

3rd Conference on Shipping, Cargo & Port-related disputes & Claims

September 2016 – Kolkata, India

Chris Hall of our Hong Kong office participated as a speaker and panelist on claims’ handling practices.

2016 SAFETY4SEA Conference & Awards

October 2016 – Eugenides Foundation, Athens, Greece

Danielle Centeno delivered a presentation on “Safety of Navigation - ECDIS Assisted Groundings - The risks of a paperless chart system & incidents resulting from the improper use of ECDIS”.

Tulane Admiralty Law Institute

October 2016 – New Orleans, LA, USA

Boriana Farrar presented on “Arbitration and Seaman Claims” and was elected on the National Advisory Board of Tulane Admiralty Law Institute. George Tsimis presented at the MLA Salvage Committee regarding cases studies and the Club's experience.

“IN THE SPOTLIGHT”

Singapore College of Insurance

October 2016 – Singapore

Chris Hall lectured on the topics of P&I and FD&D insurance.

16th Navigator Forum 2016

November 2016 - Athens, Greece

The American Club was a proud supporter at the NAVIGATOR 2016 - "The Shipping Decision Makers Forum" along with more than 500 high ranking executives of major maritime organizations and the Shipping Community from 25 countries.

Cyber Risk Seminar

November 2016 – Hong Kong

The American Club’s Hong Kong team hosted a seminar on ‘Cyber Risk and Cyber Crime in the Maritime Industry’. The event was sponsored by the Institute of Chartered Shipbrokers HK and the Hong Kong Shipowners’ Association.

Sailor Society Hong Kong Ambassador Trek 2016

November 2016 – Hong Kong

John Wilson and Chris Hall teamed up for a good cause with Andrew Brooker and Vanessa Toucas from Latitude Brokers for a fund raising hiking run on Lantau Island.

WISTA USA's AGM

November 2016 – Miami, FL, USA

During the WISTA USA's AGM, Boriana Farrar was re-elected on the Board. During the International WISTA Conference, Boriana Farrar moderated and ran a workshop in “Women In Leadership”.

36th WISTA International AGM & Conference

November 2016 – Miami, FL, USA

Maria Mavroudi participated as a panelist at the workshop “WISTA as a catalyst for International Trade and doing business around the world”, discussing the EMEA view.

"IN THE SPOTLIGHT"

Mission to Seafarers' Annual Maritime Charity Dinner

November 2016 – Hong Kong

The dinner was supported by the American Club with Chris Hall, John Wilson of our Hong Kong office and Dimitris Seirinakis of our Shanghai office.

Project Connect Fund Raising Party

December 2016 - Athens, Greece

The American Club's Piraeus team supported the fund raising Christmas party of Project Connect for young graduates and students in Greece.

Maritime Luncheon

December 2016 – India House, New York, USA

As the 2017 hull and P&I renewal season approaches, Joe Hughes addressed the current trends in global hull and P&I insurance, comparing and contrasting the ways underwriters are affected by industry dynamics and the manner in which they respond to their different constituencies.

WISTA Hellas Annual Forum 2016

December 2016 – Eugenides Foundation, Athens, Greece

The American Club was once again a proud sponsor at the WISTA Hellas Annual Forum.

GREEN4SEA Ballast Water Forum

December 2016 – Eugenides Foundation, Athens, Greece

Dr. William Moore featured on the P&I perspective on Ballast Water Management via a video presentation.

"IN THE PRESS"

STEAMING AHEAD 2017

by: Vincent Solarino
President & COO
Shipowners Claims Bureau, Inc.
New York, NY, USA

What are we steaming towards in 2017? That is a question being asked across the globe, not only in the shipping market, but in just about every other industry. The changing political spectrum around the world has inevitably created an expanded feeling of uncertainty that may have implications (positive or negative depending on your political leaning) to market conditions that fall just beyond our vision of the immediate horizon.

So, I guess you can say we have been sailing like "Columbus" in unchartered waters heading into an uncertain horizon and a "flat" world. The world market has certainly looked flat for some time now, with freight rates dropping to new lows over the past several years producing at best flat overall performance, oil prices dropping to commercially unsustainable levels with flat demands depressing the supply chain, and relatively flat economies waiting for something different to happen. There are many global variables trying to re-align into a more predictable and conventionally traditional pattern – if there remains such a thing! It's just a matter of time before the world economic engine produces a more balanced performance.

The shipping industry has seen such uncertainty in the past, but has always managed to sail through to brighter horizons. The American Club maintains the same optimistic and steadfast resolve with 2020 Vision that sees much more than a "flat" horizon. The Club had made a strategic investment in the hull and machinery market by establishing the first new Solvency II licensed insurance company in Cyprus (possibly the first in the EU) writing hull and machinery business beginning July 1, 2016 and exceeding business plan performance with over 900 vessels written within the first six months on a loss ratio of less than 30%.

The Club has also expanded its global business development strategy for its mutual P&I cover and has so far been successful in writing almost 2.5 million in new tonnage since the start of the 2016/17 policy year renewal. We are optimistic this result will increase further by the end of the 2016/17 policy year. We are also proud to say this underwriting success has been accomplished without sacrifice of high quality service and accommodation to its membership.

The American Club will remain a beacon of light during the prevailing fog of uncertainty growing brighter each day as it approaches its Centennial Year anniversary on February 14, 2017!

Happy Holidays and Good Health to all in the New Year 2017.

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