

# CURRENTS

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## THE AMERICAN CLUB

*Looking to the future with enthusiasm*

Those who have received previous editions of the American Club's in-house newsletter – now renamed simply Currents – will see that a new format has been adopted.

In conjunction with the many changes which have taken place at the Club over the past year your Board and your Managers have decided to recast the form of the newsletter by both expanding its content and improving its presentation.

We hope that readers like it! It marks an important step in the continuing development of the Club which has seen great growth and diversification over recent years. The Club has also recently issued a new brochure as a means of communicating its message both to existing Members and to those who may be interested in joining.

2002 was a good year for the American Club, despite the many challenges which faced both the insurance industry in general and the P&I market in particular.

Premium and tonnage grew at the last renewal, a trend which continued throughout the year. Indeed, at the Club's 86th Annual Meeting which took place in New York last June, Paul Sa, Chairman of the Club, was able to report an increase in free reserves, an encouraging pre-tax operating surplus and a 20% reduction in incurred claims. In addition, a record rise in tonnage from 10 million GT to 14 million GT provided a further indication that the Club's prospects had rarely been better.

The Club has made good progress over the balance of the year. And it was able to report this progress through several market receptions it undertook during 2002.

May 2002 found Club representatives hosting receptions in Istanbul and in Greece. The latter occasion – staged at the Athens Golf Club on May 30 – was particularly memorable. More than 400 guests from the world of Greek shipping were present, including senior members of the Ministry of Merchant Marine. This underlined the growing importance of the American Club's presence in Greece. The reception took place on the eve of the biennial Posidonia exhibition and provided an enjoyable opportunity to showcase the Club's services and to strengthen its already close ties with its Greek membership.

A regular Board of Directors meeting which took place in San Diego in November 2002 was another highlight. In conjunction with the meeting itself, the Board and the Managers were able to welcome several Members and other friends from the West Coast of the United States. Everyone thoroughly enjoyed the occasion and, in particular, the benefit of the southern Californian winter sunshine!

Although little sunshine was evident, the beginning of December found the Club in London welcoming the local maritime and insurance communities to a presentation and reception at Trinity House. This provided an opportunity to report the latest news on developments within the Club to representatives of this vital market, central to the Club's current and future activity.

At the time of writing, the 2003 P&I renewals are underway. Early signs point to a good result for the Club which looks forward with optimism to February 20 and beyond. As in the case of previous years, 2002 was a period of significant development in the Club's affairs. It aims for a further year of solid development in 2003 and thanks its Members and its many other friends throughout the world for their continuing support. ☺

# MARITIME SECURITY

In 2001, over 800 international liner vessels made more than 22,000 calls at the United States and an estimated 7.8 million containers were imported through 361 seaports. In the aftermath of 9/11, it is no surprise that the US Government has led the way in addressing the critical issue of port and maritime security as a matter of high priority. Consultations have been ongoing throughout the past year, involving Congress, the World Shipping Council and the US Department of Transportation, including the Coast Guard and the Customs Service, to provide short-and longer-term solutions to the problem. Some of the measures so far agreed are outlined here.

On the legislative front, the scope of the Port and Maritime Security Act 2001, originally aimed at reducing theft and smuggling at US seaports, was expanded to include a wide range of preventive measures to counteract terrorist attacks on port and maritime infrastructures. Congressional hearings continued throughout 2002 to approve the Maritime Transportation Anti-Terrorism Act, providing for the implementation of maritime anti-terrorism measures approved by the Secretary of Transportation. This was finally signed into law by President Bush in November 2002. A second bill, the Terrorist Risk Insurance Act, was also signed, requiring insurers of US-based property, including certain categories of vessels trading in US waters, to offer cover against terrorist acts.

In addition to these legislative measures, the Department of Transportation and Custom Service set up a joint working group on container security which made a series of recommendations to the White House Office of Homeland Security. In January 2002 the US Customs launched its Container Security Initiative (CSI), with four core elements:

- 1) Establishing security criteria to identify high-risk containers.
- 2) Pre-screening those containers identified as high-risk before they arrive at US ports.
- 3) Using technology to pre-screen high-risk containers.
- 4) Developing and using 'smart' and secure containers.

The main objective of the CSI is to target those ports which send the highest volumes of containers into the United States in order to detect potential problems at the earliest possible opportunity. To this end, 24-hour advance notice of cargo manifests will be required. Agreements with 10 countries have been signed to date, covering 17 of the top 20 ports.



In April 2002, US Customs Service Commissioner Robert C. Bonner announced the launch of the Customs-Trade Partnership Against Terrorism (C-TPAT), which requires importers to adopt new practices that ensure higher security of cargo and enhanced security throughout the entire supply chain. In return, their goods will receive expedited service into the United States. Membership of C-TPAT is available to a range of businesses - importers, carriers, brokers, warehouse operators and manufacturers - which agree to commit to the following:

- to conduct a comprehensive self-assessment of supply-chain security using C-TPAT guidelines.
- to submit a supply-chain security questionnaire to Customs.
- to enhance security throughout the supply-chain along C-TPAT guidelines.

By participating in C-TPAT members can expect to receive the following benefits:

- dedicated commercial lanes where infrastructure permits.
- assigned Customs account managers.
- eligibility for account-based processes e.g. monthly/bi-monthly payments.
- reduced inspections.

A large number of leading carriers have signed up to the program, representing all the major participants in the US international liner trades. They include APL, Crowley Maritime Corp, Evergreen, Hamburg Sud, K Line, OOCL,

P&O NedLloyd Ltd, Hapag-Lloyd and CP Ships. Director of Homeland Security Tom Ridge commented: 'This program is important because it strengthens the security of our borders while speeding up the flow of legitimate goods.'

The US Immigration and Naturalization Service (INS), has implemented new security measures regarding foreign-flagged vessels entering US ports, which are designated 'a potential threat to port security.' The actual criteria used in making such a determination are classified but are believed to address such factors as (1) whether the crew members hold US visas (2) whether they are nationals of countries known to harbor Islamic extremists.

Once the vessel has given the USCG its 96-hour advance notice of arrival, including the vessel crew list, visa and nationality information, the USCG will review the crew list with the INS and determine whether it is necessary to require security guards to be placed on board the vessel. If the vessel is deemed to be a potential port security threat, the USCG will send a written restriction notice to the vessel requiring the posting of one or more armed security guards on board for the remainder of the vessel's port call. Under certain circumstances, the guards will not allow any crew members to disembark from the vessel.

Following closely behind these initiatives taken in the United States, the IMO adopted new regulations to improve ship and port security at its Conference on Maritime Security in December 2002. These will enhance

existing legislation based on the Suppression of Unlawful Acts (SUA) treaties of 1988, providing for the prosecution or extradition of persons committing offenses against ships and offshore installations which endanger human lives, jeopardize property and disrupt services. Further measures are to be recommended, including the International Ship and Port Facility Security (ISPS) Code, which extends the range of SOLAS Chapter XI (Special Measures to Enhance Maritime Safety). Key proposals contained in the Code are 1) a requirement for the designation and training of security officers for ships, who will be responsible for security and contingency planning in the event of a terrorist attack 2) a requirement for ships to carry security plans.

Other initiatives to enhance maritime security include the publication of the International Chamber of Shipping's Guidelines on the Protection of Ships from Terrorism and Sabotage and a review of the ILO's Seafarers Identity Documents. ☺

***The American Club fully endorses the security measures outlined above and recommends all Members to participate as required.***

# ISM & STCW

## *Making Waves For Safer Seas*

It is estimated that 80 per cent of transport accidents are due to human error. It is the human element on board ship that can either provide the skills that may prevent a disaster or the frailty or plain lack of competence that can cause one. That is why the maritime community has shifted its approach from technical solutions to safety-related problems, to focus instead on the human factor. Key to this approach is the recent implementation of the ISM (International Safety Management) and STCW (Standards of Training, Certification and Watchkeeping) Conventions by the International Maritime Organization.

On July 1, 2002, the ISM Code became mandatory for all cargo vessels of 500 GT and above. This second phase, to include general cargo carriers and containerships, represented the final implementation of the Code which had already been mandatory for all passenger ships, oil tankers, chemical tankers, gas carriers, bulk carriers over 500 GT since July 1, 1998.

The ISM Code is a set of IMO-agreed standards under SOLAS (the International Convention for the Safety of Life at Sea) which lays down a system for the safe management and operation of vessels and for the prevention of pollution. Ship operating companies must develop:

1. A safety and environmental protection policy.
2. Instructions and procedures to ensure safe operation of ships and protection of the environment in compliance with relevant international legislation.
3. Defined levels of authority and lines of communication between and among shore and shipboard personnel.
4. Procedures for reporting accidents and non-conformities with the provisions of this Code.
5. Procedures to prepare for and respond to emergency situations.
6. Procedures for internal audits and management reviews.

### The stated benefits of the ISM Code are:

1. to ensure compliance with all international standards.
2. to help prevent accidents occurring.
3. to ensure procedures are in place for dealing with any shipboard emergency.
4. to ensure there are adequate communications between ship and shoreside personnel.
5. to ensure that all individuals know their role and responsibility, are adequately trained and have the appropriate resources to do their job.
6. to ensure that all activities and operations are planned, controlled and verified.

In detail, operators must nominate a suitably qualified, designated person with direct access to top management with responsibility to monitor these standards. The responsibilities of the master should be clearly defined and documented and safety management systems should give masters overriding authority to take whatever decisions they deem necessary in the interests of the seafarers, the ship and the marine environment. Operators should ensure that masters and crews are fit and properly qualified and aware of the provisions of the safety management system.




Operators should ensure that vessels are well maintained. Safety-critical equipment and systems should be identified and fall-back arrangements should be in place and regularly tested. All documents needed to describe and implement ISM should be contained in a manual to be carried onboard at all times.

Once the safety management system has been devised then application must be made to the flag state or a nominated classification society for certification. Both company and vessels will be inspected. Companies will then be issued with a Document of Compliance valid for five years to be kept onboard ship, while ships will be issued with a Safety Management Certificate, also valid for five years.

The other legislative arm of this new safety-awareness regime is STCW 95 (Standards of Training, Certification and Watchkeeping), which became mandatory

on August 1, 2002, upon expiry of the six-month grace period which followed the official February start date.

It seeks to establish a baseline standard for the training and education of seafarers throughout the world. By placing an emphasis on quality control and competence-based training, it lays down a structure that ensures not only the required standards are met but are seen to be met. STCW 95 stipulates in detail the required competences associated with different tasks, the knowledge and understanding required to perform them, the methods for demonstrating competences and the criteria for evaluating them. The Convention embodies provision for hands-on training and the development of basic skills through the use of simulators, laboratory training equipment and other practical training aids.

The effect on maritime training standards has been immediate, as Member States have worked toward inclusion on the IMO's White List. In the Philippines, for example, the number of training programs and institutions has been halved from more than 100 to around 50. In India an electronic database has been established providing verification of certificates alongside a formal quality assurance scheme. In Sri Lanka there has also been a sharp decrease in the number of approved training institutes. A quality standards system has been established, and the training programs have been revised to include provisions for competence-based training as set out in the STCW Code. In the United Kingdom an electronic database for certificates has also been established and the arrangements for approving training institutes have been revised and updated. 

***ISM and STCW certification is a prerequisite for obtaining P&I cover from The American Club and all other P&I Clubs in the International Group.***



# THE INTERNATIONAL GROUP

## *P&I Faces The Issues*

The International Group was established as far back as 1899 when six UK-based P&I Clubs were signatories to the original Pooling Agreement. The Pooling Agreement, now updated annually, provides for a pooling facility into which individual Clubs place claims above an agreed level and authorizes the purchase of reinsurance from the commercial market in order to cover claims excess of the Pool's retention.

*“With its impressive market profile, the International Group exerts considerable influence in the maritime industry and represents shipowners’ interests on a wide range of legislative, safety and environmental issues”*

Today the International Group comprises 13 P&I Clubs located worldwide, representing more than 93% of the world fleet. The Pooling Agreement currently pools claims between US\$5 million and US\$30 million each accident and arranges reinsurance up to US\$2.03bn. Claims exceeding this level fall back to the Pool and are shared by the Group Clubs by way of an "overspill" clause on a pro rata basis according to each Club's entered tonnage. Individual Clubs are entitled to purchase additional reinsurance in order to cover such overspill claims.

When a Club is notified of a claim likely to exceed US\$5 million, it circulates brief details to other members of the Group, together with an estimate of the ultimate liability. After settling its liability up to US\$5 million, the Club then obtains payment from the other Clubs for their respective share of the excess. The contribution payable by each Club is calculated by reference to a formula which takes into account 1) The Club's premium income 2) The Club's entered tonnage 3) The Club's historical claims record.

With its impressive market profile, the International Group exerts considerable influence in the maritime industry and represents shipowners' interests on a wide range of legislative, safety and environmental issues. It holds observer status at the IMO and is respected as a powerful lobbying group at international governmental level. Work is conducted through a large number (currently 35) of consultative sub-committees and working groups, which are assembled as and when specific matters require the Clubs' joint attention. They are composed of experienced Club representatives, with outside experts participating as necessary, who together help to formulate policy. Important issues currently under review include:

### **Bolero**

Launched in September 1999 as an e-commerce medium for commercial transactions, Bolero has made significant inroads as a means of paperless trading. However, because international law requires that bills of lading be evidenced in writing, normal P&I cover excludes paperless trading as being unsuitable for mutual risk. Furthermore, Bolero has limited liability up to US\$100,000 in the event of any claim arising through its fault. The International Group has now arranged a facility for Clubs to provide cover for individual members, for claims up to US\$50 million per occurrence. Following the introduction of Tedianet, another e-commerce medium, discussions continue as to whether paperless trading should eventually be included in normal P&I cover.

### **Compulsory Insurance**

Following the Estonia, Express Samina and other high-profile casualties, the IMO has responded to public concern by passing a new Protocol to the Athens Convention. This Protocol raises the compensation payable for passengers suffering death or injury on board vessels to SDR 250,000 / US\$345,000 and imposes strict liability on the shipowner for claims arising from shipping incidents, such as fire, collision or grounding, up to this level. A higher limit of SDR 400,000 / US\$552,000 for all losses has also been established, with the burden of proof in establishing liability falling upon the carrier. Direct action against Clubs by claimants is also allowed under the Protocol.



The International Group has argued that such high levels of compensation are unrealistic and constitute an inequitable risk within the Clubs' mutual environment, where passenger ships represent less than 5% of the membership. As matters stand, the Protocol is unlikely to be ratified for several years and only then by a limited number of States.

### **Maritime Security**

This sub-committee was formed in 2002 to consider what additional action may be necessary to ensure extra security for ships and seafarers in port and at sea, as part of ongoing counter-measures against terrorism. The American Club is fortunate in having Dan Croce, a Captain in the USCG Reserve and part of the Club's safety and loss prevention team, available to contribute expert advice on this issue.

### **Pollution**

The Group has prepared the draft Small Tanker Owners' Pollution Indemnity Agreement (STOPIA), in order to enhance the level of compensation payable under the existing IMO 1992 CLC/Fund Conventions. This follows

the proposal to establish a Supplementary Fund, or third layer of compensation, in excess of that currently available from the shipowner (and covered by his Club entry). This layer is to be funded 100% by oil receivers and would raise the current SDR 130,000/ US\$179 million limit to at least US\$500 million. Because the CLC/Fund Conventions have placed the burden of compensation equally upon shipowners and cargo interests, STOPIA aims to redress the overall balance by raising the current limit for small tanker owners (up to 29,548 GT) from SDR 3 million/ US\$4.1 million to the SDR 20 million/US\$27.5 million level.

Meanwhile, the recent Prestige disaster has focused worldwide attention on the present compensation regime and it remains to be seen whether the Group's initiative will be deemed sufficient by the EU and other regulatory authorities to satisfy their concerns.

NB The 1992 CLC/Fund Conventions do not apply to the United States, where the upper limit of shipowners' liability is defined under OPA 90 at US\$1 billion.

### **War Risks**

The urgent reappraisal of Members' War Risks cover which took place following the events of September 11, 2001, was intended to ensure consistency in the provision of war/terrorist cover to Members and to remove any doubt which may have arisen regarding the need for proper underlying cover. Group Clubs now grant excess war/terrorist cover (for liabilities incurred in excess of the proper hull value) to all Members on an equivalent basis, irrespective of the extent of their underlying cover. Following that review, the US Terrorist Risk Insurance Act 2002 has since obliged P&I Clubs to offer terrorist cover for certain categories of vessels trading in US waters. This has now been incorporated into the Group's excess war risks cover, with a new limit set at US\$400 million. 📄

# Loss Prevention Review

## *Cargo Damage/Pilferage in West Africa*

The American Club has become increasingly aware of problems involving cargo damage and pilferage in West African ports, particularly in relation to sugar cargoes. Owners will know that liability for stevedoring damage under the commonly used Sugar 69 CP is often open to dispute. They are therefore recommended to protect their position, prior to arrival at the discharge port, by issuing an appropriate notice to Charterers. An example follows:

‘Owners have been faced, in the past, with problems in discharging this type of cargo in good order and condition at ----- (nominated discharge port). Charterers will be aware that it is not an uncommon practice for stevedores to damage and/or pilfer the cargo. Owners will therefore be instructing a surveyor to attend vessel’s discharge operations and to assist the Master wherever possible. While Owners will endeavor to fulfill their obligations correctly under the charter party, they will expect Charterers to assist in preventing any unnecessary loss or damage to cargo. In the event that stevedores damage and/or pilfer the cargo, Protest Notes will be issued to the stevedoring company, the agents and Charterers, holding Owners harmless.’

## *Steel Cargo Surveys*

Owners accustomed to carrying steel cargoes will be aware of the importance of providing accurate descriptions of their condition in the bill of lading, in order to avoid possible claims for damage upon discharge. However, it is recognized that there are as yet no accepted industry standards by which rust and other damage to steel cargoes can be objectively assessed, although guides such as the American Rust Guide have been introduced in recent years to perform this function. While it is permissible to make reference to the qualitative standards devised by the American Rust Guide (and others), this should not be a substitute for the specific description of the cargo’s condition provided in the bill of lading by the Master, as per the Mate’s receipt. The Association’s Rule 2 Sec. 7 C iv applies: ‘...there shall be no recovery from the Association in respect of liabilities, costs or expenses arising out of... a bill of lading... issued with the knowledge of the Member or the master of the insured vessel with an incorrect description of the cargo or its contents or its condition.’

## *Loading Rice in Thailand*

Ship agents have warned owners recently about the hazards of using bamboo as dunnage when loading rice cargoes in Thailand. Normal dunnage consists of 2-3 layers of bamboo sticks laid in a criss-cross pattern, with a cover of bamboo matting next to the tank tops and additional bamboo matting applied to the ship’s side. However, if the bamboo sticks utilized are too fresh, mould can result from the extra humidity; also, their sharp points can pierce rice bags, causing spillage of cargo. Crew members and/or surveyors are therefore recommended to reject any unsuitable material when using bamboo sticks as dunnage. ☹



# Regulatory Review

## *Cargo shortages/overages in Turkey*

According to new regulations introduced by Turkish Customs in July 2002, the time allowed for the submission of certificates documenting the short or over-loading of cargo at the port of shipment - so that fines for cargo discrepancies upon discharge may be avoided - has been reduced. The grace period has now been set at three months - down from the previous six months - without any extension. In addition, the waste allowance rate for bulk cargo has been increased, from 2% to 3% of the bill of lading quantity, with the result that Customs proceedings will now be instigated only when cargo shortages exceed this higher figure. Also, the time allowed to contest the imposition of Customs fines has been reduced.

## *P&I Cover In Mexico*

Shipowners are reminded that it has been a requirement under Mexican Law since 1994 for all vessels sailing in Mexican waters to have P&I insurance. Although this article of the Navigation Act had not previously been enforced, a directive from the General Director of the Mexican Merchant Marine, issued in June 2002, now requires port authorities to verify that all vessels have valid P&I insurance, with penalties enforced for non-compliance.

## *Oil Pollution Compensation*

A UK fish processor, R.J. Tilbury, which claimed £643,557 (US\$0.95m) in lost profits as a result of the Sea Empress disaster, has had its claim rejected by the High Court. When the 150,000 dwt laden tanker ran aground at the entrance to Milford Haven in 1996, with the loss of 72,000 tonnes of crude oil, a fishing ban was imposed, severely affecting Tilbury’s business which depended upon processing shellfish purchased from Welsh fishermen and selling them on to South Korea.

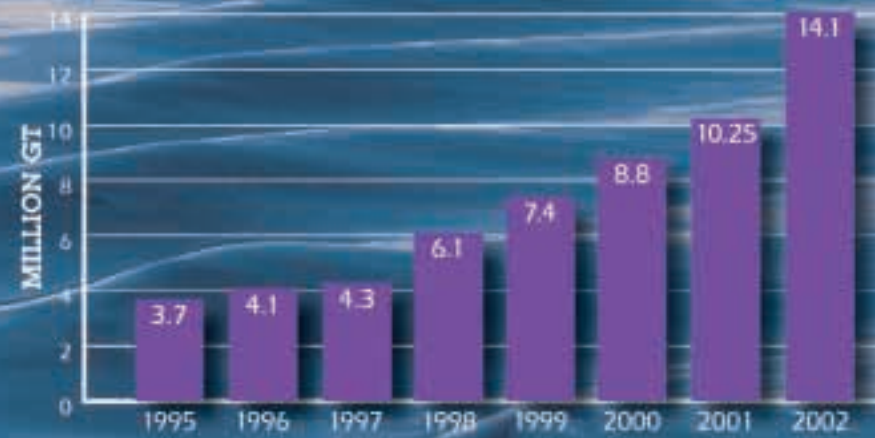
Under the first ever case to be heard in the English courts under the UK’s oil pollution legislation, Tilbury claimed that the loss had been foreseeable and was therefore entitled to compensation under the CLC/Fund Conventions. However, the judge ruled that while the loss was foreseeable, such secondary or relational losses were not recoverable. He relied upon a similar case heard by Scottish judges after the Braer oil spill off Shetland in 1993, where a fish farmer who had reared salmon smolt (juvenile salmon) for sale to salmon farms - who had also suffered loss of profits due to a fishing ban - was denied compensation. He pointed out that acceptance of such a claim would expose shipowners to ‘an indeterminate number of claimants along an infinite chain’, including, for example South Korean restaurants. An appeal against the verdict by Tilbury has recently failed.

## *Writ Service Procedures in Thailand*

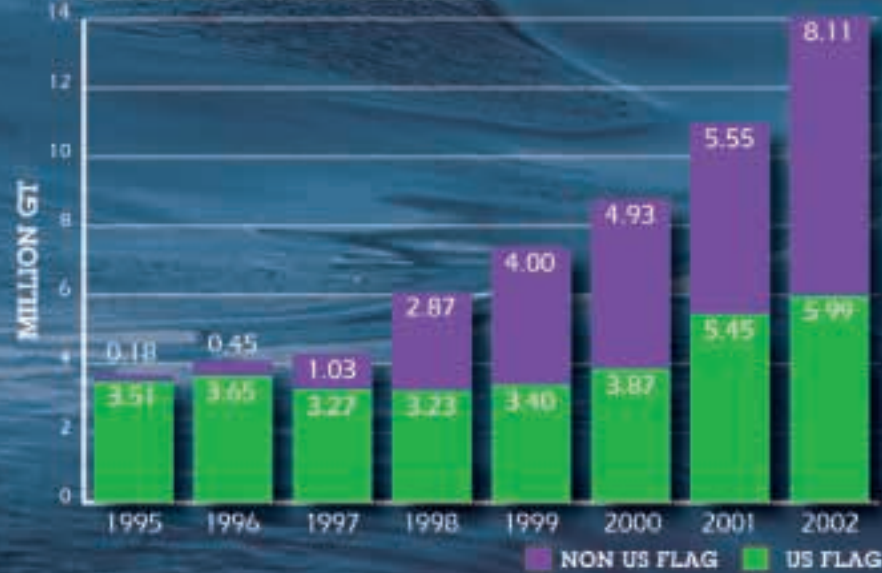
New rules governing the service of writs have affected the legal rights of shipping companies trading with Thailand. According to new regulations promulgated by the Thailand Supreme Court in August 2002, writs served on the agent of a defendant domiciled overseas are now deemed to be legally served 30 days after receipt by the agent. Any reply must be filed by the defendant within 15 days of that date. Thai nationals must file any defense within 15 days of receipt of a writ, which shall be deemed served immediately upon receipt. ☹

# AMERICAN CLUB FLEET 2002

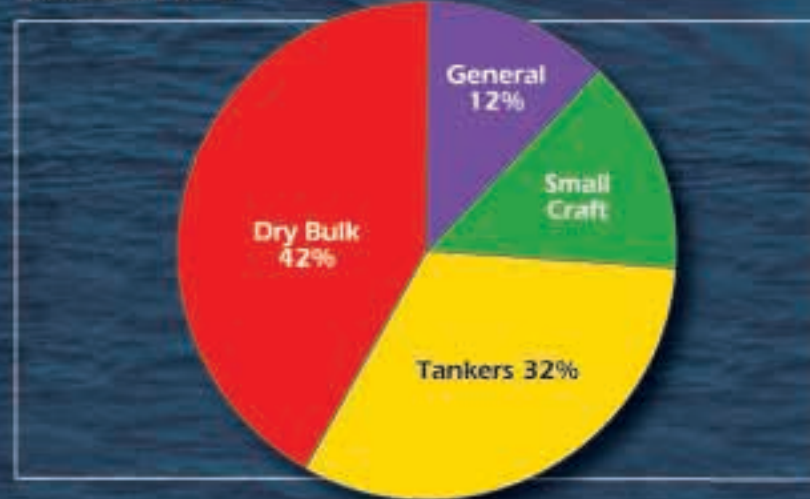
TOTAL ENTERED TONNAGE



FLAG DIVERSIFICATION



VESSEL TYPE



## AMERICAN CLUB NEWS

### Diary

|                |                        |          |
|----------------|------------------------|----------|
| March 13, 2003 | Board Meeting          | New York |
| June 12, 2003  | Annual General Meeting | New York |

### Board Changes

At the Annual Meeting of the Members in New York on June 20, 2002, the following Directors were elected to the Board of the American Club:

|                    |                                             |
|--------------------|---------------------------------------------|
| Robert A. Agresti  | P&O Nedlloyd Ltd / Farrell Lines Inc.       |
| Kenneth Engstrom   | International Shipping Partners Inc.        |
| Steve Scalzo       | Foss Maritime Company                       |
| Lawrence J. Bowles | Nourse & Bowles LLP                         |
| Richard F. Gronda, | Vitaliy Lyuty and Richard H. Brown retired. |

### The following Officers were re-elected:

|                    |                              |                 |
|--------------------|------------------------------|-----------------|
| Paul Sa            | Standard Shipping Inc.       | Chairman        |
| James P. Sweeney   | Penn Maritime Inc.           | Deputy Chairman |
| Joseph E.M. Hughes | Shipowners Claims Bureau Inc | Secretary       |

### Management Changes

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

#### New York

|                  |                      |
|------------------|----------------------|
| Michael Mitchell | General Counsel      |
| Daniel Croce     | Safety / Inspections |
| George Tsimis    | Legal / Underwriting |
| Arpad Kadi       | Financial Controller |
| Manny Beri       | IT Services          |
| Tina Trentidou   | Underwriting         |
| Rupali Gupta     | Accounting           |

#### London

|                  |                                    |
|------------------|------------------------------------|
| David Culverwell | International Group / Underwriting |
| Sharon Wilkins   | Claims                             |
| Steve Pennicott  | Claims                             |
| Joan Gosling     | Administration                     |
| Julie Hickton    | Administration                     |

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