CURRENTS

Issue Number 35 • November 2013

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To the left:

"Lost at Sea"

Dedicated in 1957, this memorial, designed by artist Alice E. Cosgrove, resides along the shore of New Hampshire's Hampton Beach, and stands in memory of "New Hampshire's heroic war dead... lost at sea in defence of our country." At it's base is the inscription "Breathe soft, ye winds ... ye waves in silence rest.

MANAGEMENT CHANGES

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

NEW YORK

ERIKA S. RUSSELL	Underwriting Assistant
COLIN G.H. SNELL	Vice President & Underwriter
ANTHONY K. SMITH	Vice President & Principal Surveyor
P. MICHAEL HANSEN	Director of Global Business Development
RAFAEL E. BUENO	Senior Staff Accountant
SEAN P. MURPHY	Staff Surveyor

SHANGHAI

CAROL WANG	Claims Assistant

THE AMERICAN CLUB 1917

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Foggy Morning

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Mr. John Steventon

INTRODUCTION

By: Joseph E.M. Hughes
Chairman & CEO
Shipowners Claims Bureau, Inc.
New York, NY

In a manner similar to the freight markets as the global economy ebbs and flows, there are important trends emerging within the P&I industry at present.

Just as freight levels are governed by the enduring reality of supply and demand, so there are constants in the P&I domain – the special features of mutuality, the way clubs add service value to the underlying insurance, pricing which responds sympathetically to shipowners' financial circumstances, the counterparty strengths of the International Group's pooling and reinsurance program, and so on.

Nevertheless, while these virtues of the Group system remain imbedded in its modus operandi, and have an enduring appeal to world shipping, certain unsettling squalls, if not winds of change, are passing over the face of the industry.

A continuing concern is the pricing of risk. Those who say that International Group clubs are not competitive cannot know the extent to which premiums for new ships have chased the market down in recent years. No club can claim to have been immune to it. The replacement of older, higher-rated tonnage with newer, lower-paying vessels – the "churn effect" – has surely affected the average premium per ton of all clubs over the recent past.

Moreover, there has been little assistance from the investment markets in subventing operational results. Returns on sovereign and corporate debt have been at all-time lows, as the continuingly accommodative policies of central bankers prolong a negative environment for bond holders. Greater returns have been available in the equity markets, but their volatility has elicited a cautious approach by most clubs, giving limited scope to offset the meager returns in the credit space.

While the cost of retained claims for their own account remains within expectations, the burden of the largest losses – the RENA and COSTA CONCORDIA being the most recent cases in point – becomes relentlessly heavier.

2011 and 2012 were years of very high pooling exposure. The cost of the COSTA CONCORDIA has set new records. Perhaps 2013 will turn out to be a better year, and will provide some respite for both clubs and their reinsurers in this regard. Hope springs eternal, as they say.

Where does this all lead? Inevitably to higher costs all round. The mutual system is well designed to subdue the effect of cost escalation for as long as possible. But rising reinsurance and related overhead, among other things, must ultimately find its way into rising ground-up prices.

Average increases of premium proposed for 2014 will emerge over the weeks ahead. Shipowners can be sure that the twin drivers of competition and mutuality will keep any rises for the next and subsequent renewals at the minimum possible. Your Managers are themselves certainly committed to doing so. In particular, administration costs have been held steady for several years. But whatever any increase should turn out to be, Members can be sure that your Managers' commitment to provide exceptional service will never be compromised.

A refusal to compromise on service was, indeed, reflected in the message which emerged from the recent satisfaction survey among Members and brokers. It showed the Club in a positive – and improving – light. Complacency, however, has no part in the future direction of the American Club, and further action to improve those areas where things can be done better is currently being reviewed. Watch this space for further news soon!

THE AMERICAN CLUB ANNUAL DINNER

The 2013 American Steamship Owners Mutual Protection & Indemnity Association, Inc. (The American Club) Annual Dinner was hosted by its Board of Directors on June 20, 2013 in New York City at Guastavino's. The event was well attended by Members, brokers, correspondents and industry leaders from around the world. The Club's Annual Dinner coincides with its Annual General Meeting which took place earlier that day and which saw the Board welcome a new Director: Mr. Lianyu Zhu of CCCC International Shipping Corp., Tianjin. The festive night celebrated a year of accomplishment and toasted the American Club's bright future.

Joe Hughes, SCB
Paul Sa (former Chairman of the Board, The American Club)
Lianyu Zhu, CCCC International Shipping
Chris Hall, SCB

Vince Solarino, SCB
Martin Recchuite, Independent Board Member
Arpad Kadi, SCB.

Marcos & Maria Marinakis, Marinakis Chartering
(Deputy Chairman of the Board, The American Club)
Julie & Tom McGowan (former President of SCB).

Susan & Arnold Witte, Donjon Marine
(Chairman of the Board, The American Club).

Chih-Chien & Melany Hsu, Eddie Steamship Company
Arnold Witte, Donjon Marine, (Chairman of The American Club).

Morton and Linda Bouchard, Bouchard Transportation
Stuart Todd, SCB.

Katia Restis, Enterprise Shipping & Trading
Angelos Kostakos, Oceanstar Management
George Vakirtzis, Polembros Shipping

GOING EAST (AGAIN)!

By: Chris Hall
Vice President
Business Development Director
South and Southeast Asia Region
Shipowners Claims Bureau, Inc -- Manager American
Steamship Owners Mutual P&I Association

For the better part of the past decade, Asia has figured prominently in the American Club's growth. The greater Asian region now accounts for about 42% of the Club's mutual owned entries. As a significant portion of this business is in China, it made sense for the Club to open a strong service office in Shanghai in 2007. As further testament to the importance of Asia to the American Club, the club is currently setting up another office in the bustling metropolis and shipping hub of Hong Kong, where the focus will be adding value in the Asian region, not just in Hong Kong and Greater China, but increasingly in Southeast Asia and South Asia. So, six years after opening in Shanghai, The American Club is going East again!

The importance of Asia to the American Club (and shipping in general) is easily understandable by reviewing the region's recent economic history and its likely future.

Over the past three decades, Asia has grown at a blistering pace, far exceeding the growth rates of most other parts of the world. Going forward, a number of banks and economic observers have come up with clever ways of analyzing and identifying which nations will become the largest economies in the 21st century, and it is no surprise that many expect Asian nations to figure very prominently, both now and well into the future.

In addition to China and Indian (two of Goldman Sachs' famous "BRIC" emerging economies), Asia and South Asia are also home to the so-called "Asian Tiger" economies (Hong Kong, Singapore, South Korea and Taiwan), the "Tiger Cub" economies (Indonesia, Malaysia, Philippines and Thailand), one third of the "CIVETS" economies (Indonesia and Vietnam), the "Asian 7" (which is what the Asian Development Bank calls "The engines of the Asian Century," comprised of China, India, Indonesia, Japan, Korean, Malaysia and Thailand), and nearly half of "The Next -11" economies (Bangladesh, Indonesia, Pakistan, Philippines, South Korea, and Vietnam), which are those states identified by Goldman Sachs as having a high potential of becoming, along with the BRICs/BRICS, the world's largest economies in the 21st century . Whichever catchy name or acronym you like, there is expert consensus that Asia will continue to play a significant role in the world economy.

This and other rosy analyses have led many to believe that the 21st Century will be "the Asian Century." On this subject, the Asian Development Bank states:

> Asia is in the middle of a historic transformation. If it continues to follow its recent trajectory, by 2050 its per capita income could rise six-fold in purchasing power parity (PPP) terms to reach Europe's levels today. It would make some 3 billion additional Asians affluent by current standards. By nearly doubling its share of global gross domestic product (GDP) to 52 percent by 2050 [compared to 13% for North America and 18% for Europe], Asia would regain the

dominant economic position it held some 300 years ago, before the industrial revolution.

In addition to economic growth, as the above quotation suggests, there are important demographic developments occurring in Asia. By 2030, the world's population will grow to about 8 Billion people, and much of the growth will be happening in Asia. In population, India and China will rank one and two, with 1.5 billion and about 1.4 billion persons, respectively. Indonesia, Pakistan and Bangladesh will rank 5, 6 and 9, with 280 million, 234 million and 182 million persons, respectively. If purchasing power increases, and if Asia is therefore home to a vast and growing middle class, as expected, then there will be a lot more people in Asia buying goods and needing infrastructure. This will be good for shipping, both in terms of international trade to Asia, as well as intra-Asian trade.

The American Club remains very much committed to being part of the historic development occurring in Asia. As such, to augment their already robust presence in Shanghai, the new Hong Kong office will be focusing much of its effort on the critically important regions of Southeast Asia and South Asia.

Southeast Asia is comprised of 11 nations with a current population of about 610 Million people. The main shipping nations are Singapore (3.446 vessels for 30.5M GT, 9th in the world, 36th largest GDP in the world), Indonesia (6,175 vessels for 11.8M GT, 20th and 16th GDP), Malaysia (1,623 vessels for 12.1M GT, 19th, 35th GDP), Vietnam (1,775 vessels for 5.3M GT, 29th, 58th GDP) and Thailand (827 vessels for 4.0M GT, 32nd GDP).

South Asia is comprised of 7 nations with a population of about 1.6 Billion people. The main shipping nations are India (1,451 vessels for 14.7M GT, 17th, 10th GDP) and Bangladesh (270 vessels for 1.4M GT, 57th GDP).

Note: All the vessel data are per Clarkson Research Services Limited, April 2013 and reflect Owned Fleets. The GDP data per IMF 2012.

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India and Indonesia have above average GDP growth rates of 7.8% and 6.4%, respectively. The region is home to a number of other countries that are developing and growing faster than the world's average of 3.7%, including: Bangladesh (6.3%), Vietnam (5.8%), Singapore (5.3%) and Malaysia (5.2%). In fact, although the countries of this region have not been immune to the world economic slowdown of recent years, nearly all of the states in Southeast Asia and South Asia are expected to be major drivers in the further growth of Asia and the overall world economy.

For all of the above reasons, Asia is an extremely exciting place for the American Club to be. It is arguable that the American Club is one of the better suited P&I insurers for the "developing" nations of Southeast Asia and South Asia. This is because the American Club has a history of working with the size, type and age of vessels frequently found in these regions. The Club understands the needs of these regional owners, charterers and market very well, and knows how to assess, underwrite and monitor the risks found in these regions in sensible and sophisticated ways. The American Club may therefore be seen as a "niche" club for this important "niche" market.

Chris Hall will be heading up the Club's efforts from the new Hong Kong office. Chris is a New York lawyer, with over 17 years of shipping and marine insurance experience. He worked as a maritime lawyer in New York City before going to Hong Kong in 1999 and later to Singapore with another IG P&I club. He started as a claims handler and lawyer, and later became involved in business development and underwriting. He returned to the US in 2011, when he joined the American Club as an underwriter, focusing on Southeast Asia.

Although Chris, his Brazilian wife, Monica and their two children enjoyed being back in the US, they found they deeply missed Asia and the life they had built there over 13 years. Their time in Hong Kong started as a youthful adventure, but it quickly became their life and home, as Monica graduated from Hong Kong University, as they developed their careers and had their two kids in Hong Kong and even as they adopted a Hong Kong-Lamma Island hill dog (who simply could not be contained by the fences of their previous Montclair, New Jersey home).

The desire of Chris and his family to return to Asia neatly meshed with the American Club's commitment and intention to expand their presence in Asia. It was therefore decided that Chris and the American Club would set up in Hong Kong this Fall.

As any who have been there know, Hong Kong is a special place. Monocle magazine says this of the city:

> For many, Hong Kong is the business city – mainly because, on the surface, there doesn't seem to be much else going on here. Built up by the British from a fishing village in the mid-19th century to an international financial capital in the 20th, its hallmark is a skyline of skyscrapers topped with the names of big banks and multinationals. Hong Kong today is one of the most international cities in the world, whether you focus on the origins of its corporations or the demographics of the people who staff them. Here, both money and people flow.

Water and vessels also "flow" in Hong Kong. The vessels, many of which are insured by the American Club and the other IG clubs, are visible from the American Club's small office, as well as from Chris' Pokfulam flat overlooking the Lamma Channel. All this shipping

activity, combined with the city's long history of being a financial and insurance capital, has helped to make Hong Kong one of the pre-eminent shipping hubs in the world. It is therefore an ideal – and inspiring – place for the American Club to set up shop.

Of course, the office in Hong Kong will focus on much more than just Hong Kong. On this subject, Chris Hall says:

> "I really enjoy being back in Hong Kong and look forward to becoming part of the shipping community here again, but I will be spending a lot of time traveling to Southeast Asia and South Asia. I love the people and cultures of these places, and feel deeply privileged that a big part of my job includes visiting old (and new) friends in my old stomping grounds of Singapore, Indonesia, Malaysia, Thailand and Vietnam. I am also looking forward to getting back to the fascinating country of Bangladesh and making in-roads into India, a culture and place for which I have always felt a deep resonance."

The office is starting conservatively with just one person, but the American Club has ambitions to expand its service in Southeast Asia and South Asia generally shortly. On this, Chris says:

> "It's not good enough just to go to these places to market. We want to add value for our members, clients and broker friends by being available in this region and facilitating business here right from the start. Furthermore, as a former claims handler, I consider the real "product" of any P&I club to be handling claims professionally and efficiently, and essentially "solving the problems" of our members and P&I business partners. In time, that means adding dedicated claims services for Southeast Asia and South Asia, given the exciting developments already happening in these regions.

All in all, the American Club is pleased to be playing a growing role in what appears to be "the Asian Century," and looks forward to assisting members, clients and brokers throughout the region however and whenever possible.

In the meantime, should you find yourself in Hong Kong, you would be most welcome to visit our modest office in the iconic Hopewell Center in Wanchai. Assuming Chris is not in Singapore, Jakarta or Chittagong, he would surely enjoy the company!

WATERY GRAVES

By: John Poulson, Principal Surveyor for Atlantic Marine Associates and past Chairman of the Association of Average Adjusters of the United States.

Nickel Ore has recently been described by Intercargo as being the deadliest cargo in the world. This label is understandable, given the statistics, but what is behind it?

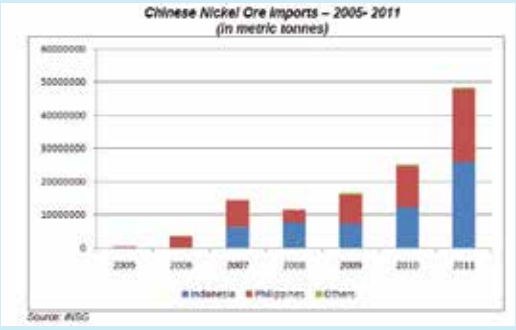
The following is an adaptation of a presentation to the Association of Average Adjusters of the United States and Canada delivered by John Poulson of Atlantic Marine Associates who was one of a four-member panel presenting on the subject: "Watery Graves & Broken Backs."

A couple of the regulatory body aspects of the carriage of nickel ore will be touched on here but what I am going to focus on is how and why it can go wrong. While I do not claim to be an expert on scientific properties of nickel ore per se, I have investigated vessel loss and interviewed surviving seafarers from such disasters and I appreciate the opportunity to bring awareness to this serious problem and in the context of a prestigious platform such as this.

Nickel ore exports from Indonesia and the Philippines have been increasing at quite a high rate, as you can see from the table below. Exports are now somewhere north of 55 million tonnes a year.

Nickel ore demand

Significant demand for nickel ore in China as it is the principle alloy component for stainless steel



2012 at 50k tons/shipment

If this pace keeps up, Indonesia will have been relocated to China by the end of this century and there will just be a big hole left behind!

The tragic statistic in this discussion is that, since 2010, five ships have been lost with the loss of over 80 seafarers:

Nickel Ore Losses

27 October 2010: JIAN FU STAR sank while carrying nickel ore from Indonesia to China. **(13 fatalities)**

10 November 2010: NASCO DIAMOND sank while carrying nickel ore from Indonesia to China. **(21 fatalities)**

03 December 2010: HONG WEI sank while carrying nickel ore from Indonesia to China. **(10 fatalities)**

25 December 2011: VINALINES QUEEN went missing. One sole survivor. **(22 fatalities)**

16 February 2013: HARITA BAUXITE sank while carrying nickel ore from Indonesia to China off of western Luzon, Philippines. **(15 fatalities)**

Someone at the inquiry of the sinking of the DERBYSHIRE many years ago said "when your ship sinks in a typhoon, it's something to do with the typhoon." Now it can be said that "when your ship sinks while it is carrying nickel ore, it's something to do with the nickel ore".

More specifically, it is liquefaction. The nickel ore loaded into the vessel contains sufficient water content to allow it under certain circumstances to flow like a liquid and to cause the vessel to lose stability.

The HARITA BAUXITE pictured here in better days loaded at Obi Island in Indonesia.

The TRANS SUMMER pictured below is the latest casualty but thankfully the particular circumstances of that case and proximity to land meant that there were no fatalities. Had this latest casualty followed the pattern of others, we could be looking at over 100 dead sea-farers in 3 years.

Four days into its voyage to China, the HARITA BAUXITE stopped at sea to carry out engine repairs. After stopping, the ship capsized in less than 30 minutes and sank in 4000 feet of water off the Philippines.

The surviving crew recounted some astonishing stories:

- The Chief Officer undoubtedly saved the lives of at least 3 of his shipmates, leading them down the starboard main deck as the vessel capsized then scaling down a deck fire-main which was by now vertical and then using the handrails at the transom as a ladder to climb down before stepping off into the sea.
- The 2nd Engineer & Oiler ran up engine room stairs while they were still almost vertical, barely escaping in time.
- The 3rd Officer was on watch on the bridge throughout the incident. He recalled seeing the Captain at the GMDSS station trying to send a Mayday. As the vessel capsized he made his way out onto the starboard bridge-wing and walked up the side of the bridge, stepping off into the sea by the radar mast and grabbing on to an oil drum.
- Sadly, 15 of the crew were lost, many were in the engine room and stood no chance of escaping.
- The Chief Cook survived the sinking, but succumbed to a shark attack during the night, prior to being brought on to a life raft by surviving crew members.

This is a photograph showing a cargo hold after carriage of nickel ore. From this you can clearly see the level the nickel ore cargo reaches; only roughly 1/3 full by volume

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SO HOW DO WE CARRY THIS STUFF SAFELY?

Flow moisture point (FMP): percentage moisture content (wet mass basis) at which a flow state develops "*under prescribed methods of testing*"

Transportable moisture limit (TML): maximum moisture content of the cargo which is considered safe for carriage

Well, from analysis, we need to know the Moisture Content, the Flow Moisture Point (FMP) and from that the Transportable Moisture Limit (TML) which is 90% of the Flow Moisture Point. So as long as the Moisture Content is below the TML we are safe right?


BANGUN PERSADA

And here is an example of a typical cargo certificate issued by the Shippers prior to loading, and stating that the FMP is 40.95%, the TML is 36.85% and the MC at shipment is 33.86%. Based on these stated figures, there should not be any problems, except that

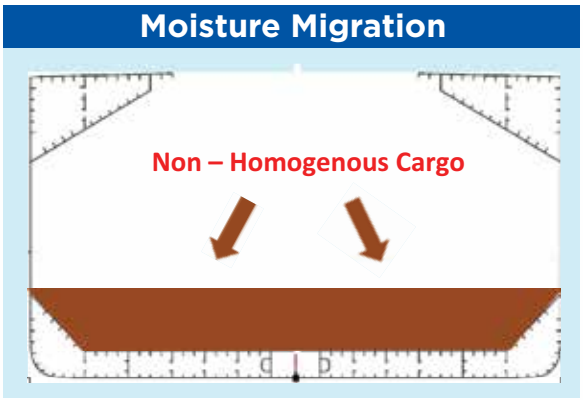
The photograph below depicts the cargo purported to be referred to by that certificate.

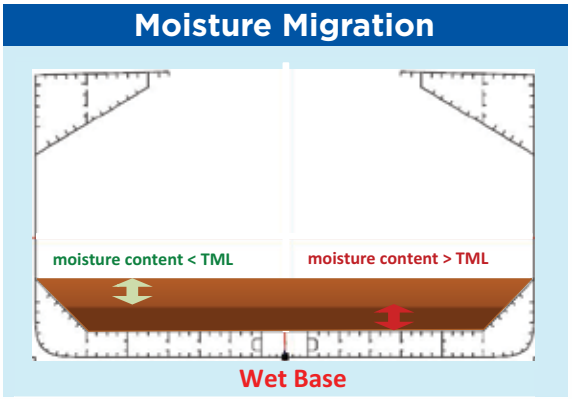
This cargo was loaded on to another ship at Obi Island at the same time as the HARITA BAUXITE. *The American Club* dispatched a surveyor to the discharge port in China to take cargo samples which were analysed by a laboratory in Hong Kong. The results, as the picture suggests, bore no resemblance to the figures on the cargo certificate produced by the Shippers.

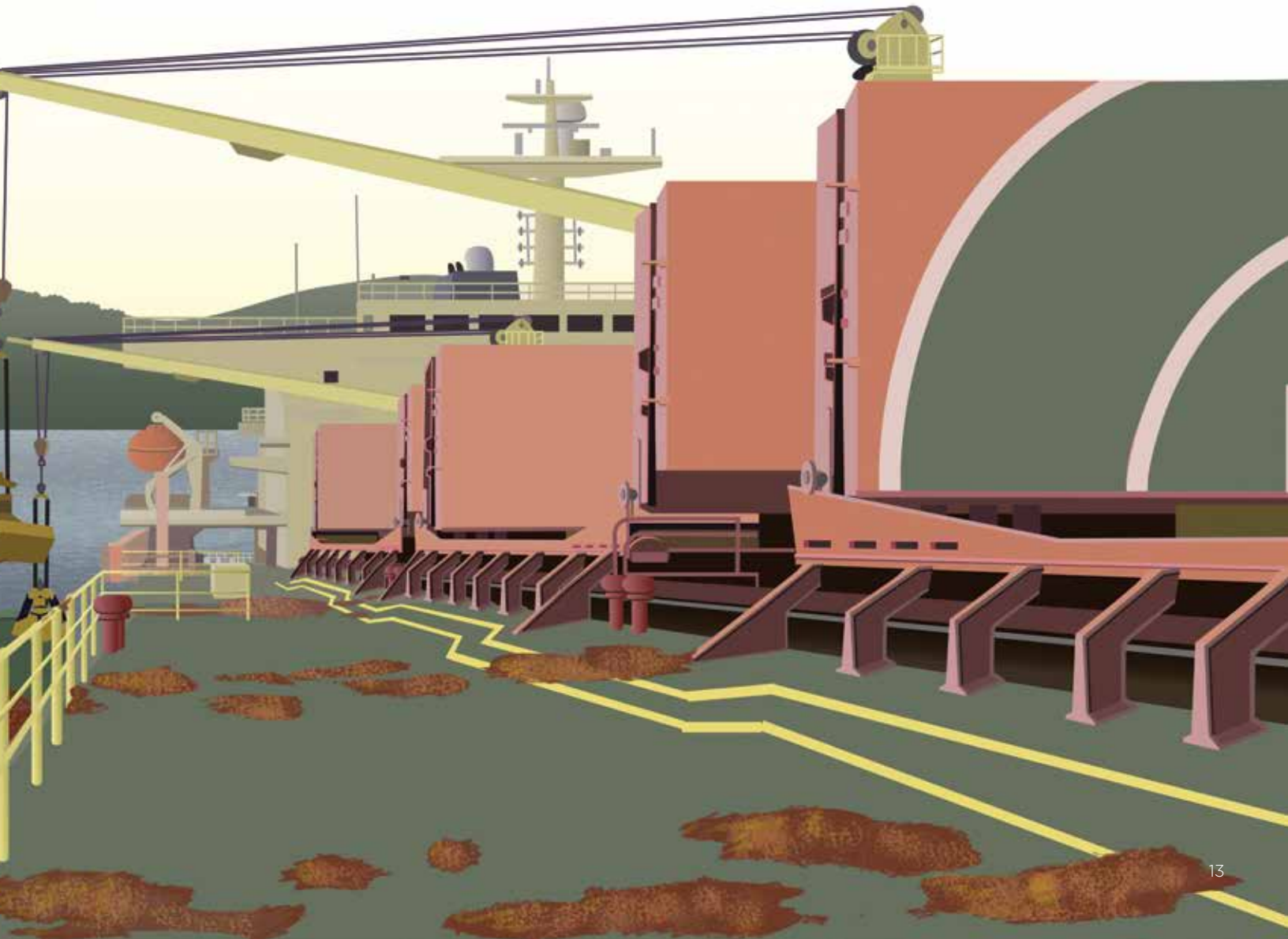
And this is the problem. The certificates are NOT representative of the cargo being loaded.

One issue is that of moisture migration. Cargo is loaded from barges and can take some time. Different particle sizes and different water content can produce a non-homogenous mixture.

And during the voyage moisture can migrate causing a wet base to develop. Capsizing still seems to need a catalyst. That catalyst in the one case was just stopping at sea but it could be a course alteration or heavy weather.







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WHAT CAN THE CREW DO?

Pre-Loading/Loading

Visual inspections of cargo prior to and during loading

Can-tests at loading: IMSBC Code "complimentary" Question/verify moisture content figures in the cargo declaration

Voyage

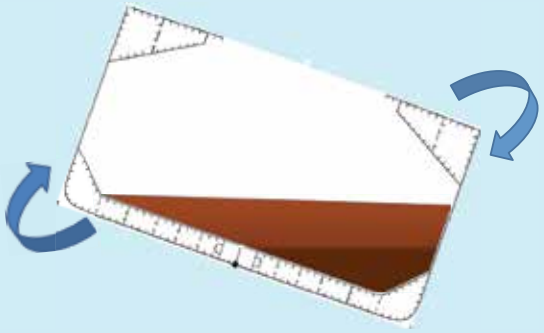
Regular visual checks of the cargo surface

Daily cargo hold bilge soundings

But not much more. Disturbingly the hatches can be opened at sea and the surface of the cargo inspected daily but there may be no visible change and there may be no water accumulation in any of the hold bilges as noted in the IMSBC Code:

Cargo testing: IMSBC Code, Section 7, Regulation 7.3.2

"...the cargo surface may appear dry, undetected liquefaction may take place resulting in shifting of cargo. Cargoes with high moisture content are prone to sliding, particularly when the cargo is shallow and subject to large heel angels."



Proper laboratory analysis of multiple samples from all stockpiles of cargo to be loaded is the answer but this has proved very difficult to guarantee in remote mining areas unless you have the wherewithal of an informed Owner. Even then, we have witnessed the intimidation of surveyors.

What else can be done? Well, there are ships that can carry this cargo without concern for moisture content. One vessel, the JULES GARNIER II, classed by NK, was recently delivered in September 2012 to its owners and is the first vessel in the world to be recognized as a specially constructed cargo ship for the carriage of nickel ore in accordance with the IMSBC Code. Such a dedicated ore carrier could be a solution, but there are not sufficient numbers of these vessels to move the amount of nickel ore being presently exported from Indonesia.

Perhaps the cargo should be mixed with water and carried in tankers?

TO SUMMARISE THEN:

- 81 seafarers have lost their lives since October 2010 on ships carrying nickel ore. Sadly, there are likely more to come.
- Regulations are lagging far behind the realities of the nickel ore trade.
- Industry stakeholders (e.g. Intercargo, BIMCO, IG Clubs) undaunted but challenged to produce unified solutions.
- Political, economic and commercial interests and pressures make any significant progress difficult. Recently cargoes have been rejected when properly analysed only to be carried by other vessels; in other cases Owners have not tried to obtain any proper laboratory support for figures entered into cargo declarations and have prejudiced their P&I cover.

AN OBSERVATION;

31 people lost their lives on the COSTA CONCORDIA. There was public outrage and multiple criminal prosecutions are being pursued. Redesign of cruise ships is being called for.

81 seafarers have lost their lives carrying nickel ore since October 2010. 0.06% of world trade resulted in 80% of deaths at sea. The legislation necessary to prevent it from happening again is not even in place yet.

And before anyone tries to draw a distinction between passengers and a paid crew, let me tell you that these seafarers are as defenceless as any of the passengers on the COSTA CONCORDIA.

And this, sadly, is the current situation.

JP

Please visit the American Club's website for additional material on this general topic: www.american-club.com

About KOMOS

By: Capt. S.K. Kim - Chairman & CEO
Dr. Dong Hyun Kim - Vice President
Korea Marine, Oil Pollution Surveyors & Adjusters Co., Ltd.


2012 Year-end Cocktail Party at KOMOS Seoul Office

KOMOS was founded in 1988 by Captain S.K. Kim to offer independent marine, oil pollution and fishery surveying and consultancy services to clients including ship owners, charterers, oil companies, their legal and insurance interests as well as intergovernmental bodies such as International Oil Pollution Compensation Fund.

The head office of KOMOS is located in Seoul with regional offices in Busan, Incheon and Ulsan. The KOMOS organization is ready to respond at a moment's notice and attend to oil spills and/or casualty sites anywhere in Korea and abroad. KOMOS includes some 15 master mariners, qualified deck and engineer officers, biologist, ecologist, fishery surveyors and 2 marine loss adjusters.

KOMOS celebrated the 25th anniversary of its founding on 14th July and during its existence, KOMOS has responded to over 300 marine oil spills and fishery incidents including the cases of "Keum Dong No. 5" in 1993, "Yuil No. 1", "Sea Prince" and "Honam Saphire" in 1995, "O-sung No. 3" in 1997 and "Hebei Spirit" in 2007, which is one of the biggest oil spill cases in history.

On 7th December 2007, the VLCC China flag tanker, "Hebei Spirit" (146,848 GT), laden with 209,000 tons of crude oil, was involved in an oil spill incident off Taean on the west coast. About 10,500 tons of crude oil escaped into the sea. The incident is regarded as the largest oil spill incident in the history of Korea. The IOPC Funds together with the shipowner's insurer, Skuld Club, have appointed KOMOS to monitor the clean-up operations and assess the fisheries/ mariculture claims and government claims.

As a correspondent of the American P&I club, KOMOS has attended to many marine casualties involving the members of the club. One recent case is that of the "Fu Sheng Hai", which ran aground at Saengdo islet off Busan, South Korea, on 2 July 2013. With the full support of American Club's Shanghai team KOMOS is now participating in the wreck removal activities and has provided a central point for various parties such as Owners, P&I Club, Korean coast guard, local government, salvors and clean-up contractors.

In 2010 KOMOS brought in Dr. Dong Hyun Kim, who is a son of Capt SK Kim, to succeed the latter in due course. Dr. Kim obtained a Ph.D. in Mechanical engineering at the University of Texas, Austin, and worked at Cisco Systems in Silicon Valley of California, a world-class IT firm, for 7 years as supply chain operation manager. He presently serves as an executive vice president of KOMOS and leads its global expansion.

KOMOS takes pride in the fact that it had never lost the trust and confidence of our international clients in handling accidents at sea. KOMOS will do everything it can to maintain its proud record.

As a correspondent for American P&I Club and an independent survey company KOMOS is growing from the seed its founder planted in insurance industry sector. As a seed grown in good soil that yields a hundred fold, KOMOS will continue to build up its heritage.

Capt. S. K. Kim
Chairman/CEO

On July 2, 2013, the M/V FU SHENG HAI, a 31,643 gross ton geared bulker grounded just outside of Busan, South Korea in heavy seas while en route from China with a cargo of 41,521 MTs of steel and plywood products. Messrs. KOMOS, our correspondent in Seoul, was instructed by the Association in connection with its post-casualty response to this grounding and assisted with efforts to retain the services of local salvage companies in the area to refloat the vessel and remove bunkers. Picture no. 1 shows the FU SHENG HAI after it grounded. On July 5th, 64 MTs of bunkers were successfully removed from the vessel by local salvors. Unfortunately, four days later on July 6th, the vessel broke in two in rough weather. The fore section of the vessel through Hold No. 4 sank in 40 meters of water, while the aft section remained aground as demonstrated by picture nos. 2 and 3. Messrs. Nippon Salvage was thereafter engaged to remove the aft section and tow it to Busan port. In picture 4, we see Dr. Dong Hyun Kim, Director and Surveyor from Messrs. Komos (far left) with two crew members of the FU SHENG HAI and Mr. Raymond Sun (second from right), Chief Representative and Managing Director of SCB Management Consulting Services Ltd. in Shanghai, on the launch to the vessel following the casualty. Raymond is also shown on the deck of the aft section in picture no. 5. Efforts to remove the fore section of the vessel are expected to commence shortly and will likely be completed during the next several months.

U.S. Economic Sanctions Against Iran - Navigating Treacherous Waters

By: Hal Eren and Steven Pinter
Attorneys at The Eren Law Firm, Washington, DC

This article has been redacted from its original longer, more comprehensive version for publication in print. The full version of this article is available at:

http://american-club.com/files/files/currents_35.pdf

Shipowners and vessels trading with Iran and their insurers face formidable challenges in understanding and complying with U.S. Iran economic sanctions laws.
The United States imposed the current sanctions against Iran beginning in 1995, and since then has constantly tightened and broadened the scope of the sanctions through the issuance of additional Presidential Executive Orders, the enactment of several statutes, and by the revision and issuance of relevant sanctions regulations. These laws are numerous, complex, and sometimes overlapping. In certain aspects they are also broadly worded and purposefully ambiguous to preserve maximum U.S. government flexibility for interpretation and, consistent with U.S. foreign policy and sanctions objectives, to discourage trade with Iran even where such trade is permissible under the laws of other countries.

Primary U.S. Iran sanctions laws apply to United States (U.S.) Persons, i.e., individuals or entities that are subject to the (traditional) general in personam jurisdiction of the United States, and to transactions that have a U.S. nexus. Secondary U.S. Iran sanctions have extraterritorial effect and apply to or impact non-U.S. Persons, i.e., individuals and entities that are outside of the jurisdiction of a State under traditional jurisdictional principles and to activities that have no U.S. nexus if such activity constitutes "sanctionable activity" under relevant U.S. Iran sanctions laws.

The United States recognizes the importance of the shipping and maritime insurance sector to its Iran sanctions objectives. U.S. Iran sanctions Executive Orders and legislation have therefore specifically targeted, among other activities involving Iran, the activities of shipowners and their insurers.

Violations of U.S. Iran sanctions laws by U.S. Persons or which have a U.S. nexus could lead to severe civil and criminal penalties. Contraventions of U.S. Iran sanctions by non-U.S. Persons or lacking a U.S. nexus could lead to the imposition of U.S. sanctions on non-U.S. Persons. For example, U.S. sanctions are required to be imposed against foreign shipowners, vessels and insurers for sanctionable activities which have no U.S. nexus as if these shipowners, vessels and insurers were the government of Iran or Iranian entities, the primary targets of U.S. economic sanctions against Iran.

In this article, we provide a brief overview of the U.S. sanctions against Iran to aid shipowners trading with Iran and their insurers to reach a better understanding of how they can comply with U.S. Iran sanctions laws and avoid activity which may result in the imposition of U.S. penalties or sanctions against them.

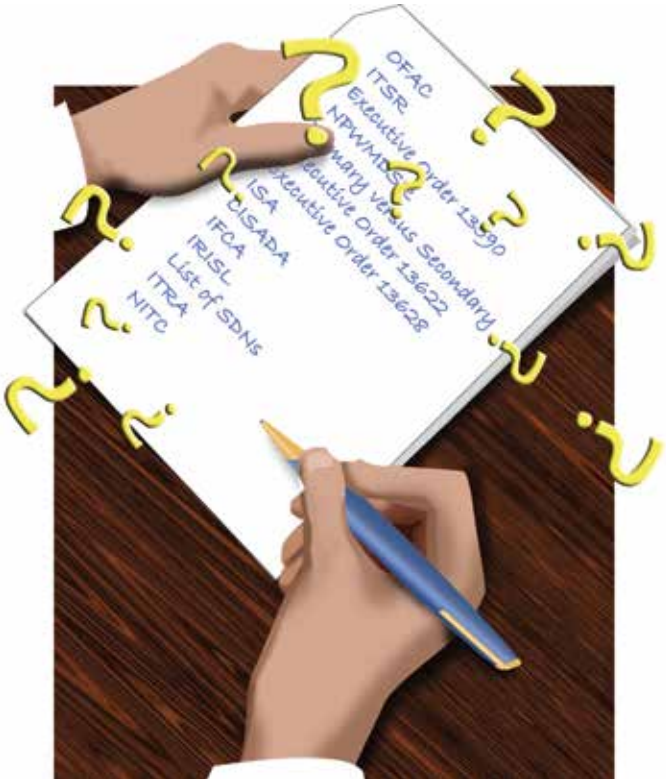
Trading with Iran Presents Significant Legal Risk

The U.S. sanctions against Iran are vigorously enforced. What provision of law applies and how it applies to a specific transaction or voyage is not always easy to discern. The U.S. government can broadly construe the Iran sanctions provisions to capture a variety of activities involving Iran. Many U.S. government sanctions determinations are not open to effective judicial review. The laws of other countries that govern their sanctions against Iran, for example those of the European Union, further complicate matters and add to compliance burdens. Consequently, trading with Iran and the insurance of such trade presents significant legal risks for shipowners and their insurers.

Shipowners and Insurers Have Adopted Iran Sanctions Exclusions to Achieve Compliance

To guard against violations and contraventions of U.S. Iran sanctions laws and to avoid engaging in sanctionable activity, most U.S. as well as non-U.S. P&I and other insurers have adopted rules to exclude or stop coverage whenever coverage or performance could expose or present a risk of exposing the insurer to U.S. sanctions or penalties. Some shipowners have integrated clauses in charterparties excluding from the scope of charters voyages or other activities involving Iran that would constitute prohibited or sanctionable activity. However, these exclusionary rules still require difficult determinations and close judgment calls by shipowners and insurers as to whether a voyage involving Iran or coverage therefor is prohibited or sanctionable, or by a lower standard, if the voyage to or from Iran even presents a risk of being prohibited or sanctionable.

Out of abundance of caution and for fear of the risks associated with being wrong on the law, some insurers



and shipowners, "throwing the baby out with the bathwater," have excluded insurance coverage and voyages involving Iran all together.

U.S. Iran Sanctions Laws – Two General Categories

U.S. economic sanctions against Iran are governed by U.S. laws[1] that fall into two general categories, Primary Sanctions and Secondary Sanctions. The consideration of these laws in the two general categories simplifies understanding of the U.S. Iran sanctions program.

Primary U.S. Iran Sanctions

The laws and regulations governing Primary economic sanctions against Iran first came into force in 1995. Since then, they have undergone numerous amendments which have strengthened and broadened these sanctions.

Primary sanctions, with very few narrow exceptions such as for food and medical exports to Iran prohibit trade with Iran, investment in Iran, and block (freeze) the property (assets) of the Government of Iran and other Iranian sanctions targets. For example, unless authorized by the U.S. Treasury Department, the Iranian Transactions and Sanctions Regulations (the "ITSR") and the underlying Executive Orders and statutes which the ITSR implements and codifies, prohibit U.S. Persons from exporting services to Iran, and engaging in any transaction in connection with goods destined to or from Iran. The ITSR also, among other things, prohibits U.S. Persons from approving, supporting or otherwise facilitating a transaction between a foreign person and Iran if the transaction by the foreign person is a transaction that the U.S. Person is prohibited from engaging in. For example, the mere provision of coverage by a U.S. insurer for voyages to Iran (without any payment of claims thereunder) by a non-U.S. shipowner's vessel constitutes prohibited facilitation, as well as a prohibited exportation of services to Iran.

Primary sanctions are expressed in terms of prohibitions and requirements with which U.S. Persons or transactions that have a U.S. nexus must comply. With few exceptions, the Primary sanctions are very comprehensive and they apply to U.S. Persons or to transactions that involve a U.S. Person or otherwise have a U.S. nexus. Primary sanctions that concern shipowners and insurers are governed by the ITSR, the Nuclear Proliferation and Weapons of Mass Destruction Sanctions Regulations (the "NPWMDSR"), and their underlying Executive Orders and statutes. The ITSR and the NPWMDSR are administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"). The Iranian Financial Sanctions Regulations (the "IFSR"), which are a hybrid of Primary sanctions and the Secondary sanctions, discussed in more detail below, as well as the ITSR and the NPWMDSR impact banks and other financial institutions serving shipowners and their insurers.

Under the Primary sanctions, or the ITSR and the NPWMDSR, the definition of U.S. Persons follows traditional jurisdictional principles. U.S. Persons are defined as U.S. citizens and U.S. permanent residents wherever located, persons (individuals and entities) located within the territory of the United States, entities organized under the laws of any jurisdiction in/of the United States, and the foreign branches of such entities.

Executive Order 13628 and the ITSR, in effect, extend the prohibitions and requirements of the ITSR to foreign entities owned or controlled by U.S. Persons, e.g., foreign subsidiaries of U.S. companies. Under the ITSR, an entity that is a U.S. Person can be held (vicariously) liable for violating the ITSR, if a foreign entity owned or controlled by that U.S. Person and established or maintained outside the United States engages in any transaction directly or indirectly with the Government of Iran or any person subject to the jurisdiction of that Government if that transaction would be prohibited for U.S. Persons under present U.S. Iran sanctions law.

Non-U.S. Persons can also violate the ITSR and the NPWMDSR if their transactions involving Iran have a U.S. nexus or if they cause a U.S. Person to violate the sanctions. In such an instance, i.e., with respect to a transaction involving Iran that also involves the United States or a U.S. person, the non-U.S. Person would be subject to specific U.S. jurisdiction (i.e., with respect to a transaction involving Iran and only if that transaction also involves the United States or a U.S. Person). For example, a funds transfer to the Government of Iran by a bank that is not a U.S. Person would be blocked if it were transferred through the United States or via the

continued from page 17

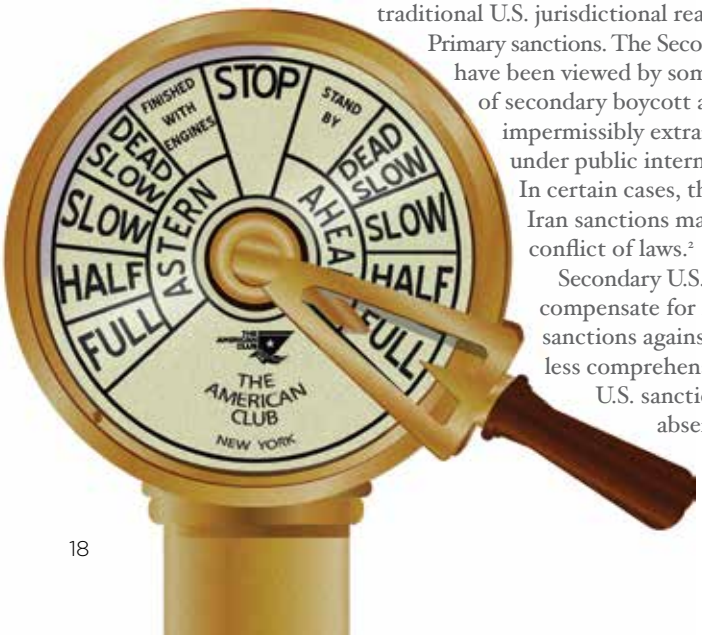
U.S. financial system (U.S. nexus). The non-U.S. bank could also be held liable for violating the ITSR or the NPWMDSR and a relevant Executive Order if it falsified payment instructions to obscure or hide the fact that funds being transferred through the United States were actually intended for the Government of Iran. A foreign trading company could cause a violation of the ITSR by inducing a U.S. company to export goods to a third country knowing that the goods are actually intended for Iran.

The penalties for violations of the ITSR and the NPWMDSR include substantial civil monetary penalties, and criminal penalties, which can include substantial monetary fines and/or imprisonment. Where U.S. law enforcement is unable to impose and enforce a civil and/or criminal penalty against a non-U.S. Person for a violation of the ITSR or the NPWMDSR, U.S. sanctions, i.e., prohibitions on dealings with the non-U.S. Person, may be imposed against that person.

For the requirements and prohibitions of the Primary sanctions against Iran to apply or to be implicated, the transaction and/or activity must involve a U.S. Person or have a U.S. nexus. Transactions and activities by non-U.S. Persons that do not involve U.S. Persons or which do not have a nexus to a U.S. Person or to the United States are outside of the jurisdictional reach of the ITSR and NP WMDSR, and thus would not implicate any prohibitions and requirements under these regulations or Primary sanctions. It is for this reason and, with the foreign policy goal of making the sanctions as tight and comprehensive as possible, that the United States maintains Secondary Iran Sanctions.

Secondary U.S. Iran Sanctions

Laws and regulations governing Secondary sanctions against Iran are designed to apply to the activities of non-U.S. Persons, to transactions having no U.S. nexus, and to transactions and persons otherwise beyond the traditional U.S. jurisdictional reach of the Primary sanctions. The Secondary sanctions have been viewed by some as a form of secondary boycott and as being impermissibly extra-territorial under public international law. In certain cases, the Secondary Iran sanctions may give rise to a conflict of laws.[2]



Secondary U.S. Iran sanctions compensate for multilateral sanctions against Iran that are less comprehensive than the U.S. sanctions, for the absence of Iran sanctions laws in some countries, and for the lax enforcement of sanctions laws in other countries. The U.S. sanctions against Iran go well beyond sanctions against Iran imposed under United Nations Security Council Resolutions. Secondary sanctions broaden U.S. sanctions against Iran by deterring trade with and investment in Iran by persons who are not required to comply with Primary sanctions. Primary sanctions already prohibit U.S. Persons from engaging in sanctionable activities. According to the United States, if non-U.S. Persons deal with Iran, they are bound by Iran sanctions laws directly applicable to them (to the extent there are any or they are enforced) as well as, in certain instances, to U.S. laws governing Secondary sanctions against Iran.

Under the Secondary sanctions, the U.S. government has defined certain activity involving Iran by non-U.S. Persons as "sanctionable activity" that will lead to the imposition of U.S. sanctions against the non-U.S. Person engaging in such activity. As noted above, non-U.S. Persons are not subject to traditional general U.S. in personam jurisdiction. They are outside the United States and usually beyond the reach of U.S. law enforcement authorities and traditional law enforcement methods and processes, and their transactions or activities lack a U.S. nexus or connection. Consequently, the imposition of sanctions or the potential imposition of sanctions operates to effectively regulate the behaviour of non-U.S. Persons, vis- à-vis Iran, as if they were U.S. Persons. Secondary sanctions are an effective substitute for and compliment to the Primary sanctions and to traditional civil and criminal penalties that cannot always be readily enforced against non-U.S. Persons. If a non-U.S. Person contravenes laws governing Secondary sanctions, instead of paying a civil fine or being subject to criminal penalty, the non-U.S. Person may instead face U.S. sanctions.

Secondary sanctions, once imposed, are expressed in terms of prohibitions with which U.S. Persons must comply vis- à-vis an individual or entity against which sanctions have been imposed. The sanctions imposed under laws governing the Secondary sanctions can range from the mild sanctions that prohibit the grant of U.S. export licenses or U.S. Exim bank credits to the sanctioned person, to the more draconian sanction that requires the freezing of assets and that exclude the sanctioned party from virtually all business with the United States and U.S. Persons. These latter sanctions can essentially cause all the prohibitions and requirements of the kind found in the ITSR or the NPWMDSR to apply to transactions by U.S. Persons with or involving the sanctioned person.

The sanctions imposed under the Secondary sanctions also usually mean the inclusion of the sanctioned person on a U.S. sanctions blacklist -- the OFAC List of Specially Designated Nationals (SDNs) and Blocked Persons. In effect, to one degree or another, persons sanctioned under laws governing the Secondary

sanctions become sanctions targets themselves as if they were, for example, the Government of Iran. The status of being a U.S. sanctions target has a very negative impact on the sanctions target's ability to do business with the United States and with U.S. companies. As a practical matter, it also negatively impacts the sanctions target's ability to do business with other countries and non-U.S. companies because there is a risk that sanctions may be imposed against these non-U.S. companies for dealing with U.S. sanctions targets, or there is a perception and fear that this may happen. A non-U.S. Person targeted by the United States suffers great reputational damage and as a further practical matter, experiences difficulty doing business worldwide. Furthermore, lifting sanctions imposed on an entity is very difficult and, in some cases, not possible until there is a change in U.S. Iran policy and all or a substantial portion of sanctions against Iran are lifted. In sum, the stigma and the negative consequences that flow from being included on a U.S. blacklist cannot be overstated.

The first U.S. Iran sanctions law falling within the Secondary sanctions category is the Iran Sanctions Act of 1996 (the "ISA"). Under ISA, certain investments in Iran's oil sector by non-U.S. Persons may lead to the imposition of sanctions. ISA was amended and greatly expanded by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of July 2010 ("CISADA"). Subsequent to ISA and CISADA, in 2010 there have been more than eight (8) separate additional statutes, Executive Orders and implementing regulations expanding the number, scope and kinds of activities which may lead to sanctions against non-U.S. and non-Iranian persons engaging in such activity. The most recent law within the Secondary sanctions category was enacted on January 2, 2013, the Iran Freedom and Counter-Proliferation Act of 2012, (the "IFCA"), part of the National Defense Authorization Act for 2013.

Sanctionable Activity under Secondary Sanctions Laws

The complete universe of sanctionable activity under the Secondary sanctions laws is too large to enumerate and to analyse in this article. However, below, we briefly highlight several examples of sanctionable activity under U.S. Secondary sanctions laws against Iran which are specific to the maritime insurance and the shipping sector.

Comprehensive Iran Sanctions, Accountability, and Divestment Act of July 2010 (CISADA)

The following activities constitute sanctionable activity under CISADA:

1. Selling, leasing, or providing to Iran goods, services, technology, information or support that could directly and significantly facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products, including any direct and significant assistance with respect to the construction, modernization, or repair of petroleum refineries. These sanctions are triggered if any of the foregoing activities individually has a fair market value of $1 million or more, or during a 12-month period, an aggregate fair market value of $5 million or more;
2. selling or providing to Iran refined petroleum products that have a fair market value of $1 million or more, or during a 12-month period, an aggregate fair market value of $5 million or more; or
3. selling, leasing, or providing to Iran goods, services, technology, information or support that have a fair market value of $1 million or more, or during a 12-month period, an aggregate fair market value of $5 million or more and that could directly and significantly contribute to Iran's ability to import refined petroleum products, including:
   a. entering into a contract to insure or reinsure the sale, lease or provision of such goods, services, technology, information or support;
   b. financing or brokering such sale, lease or provision; or
   c. providing ships or shipping services to deliver refined petroleum products to Iran.

CISADA provides that no sanctions are to be imposed on an underwriter, insurer, or reinsurer if the President determines that a person has exercised due diligence in establishing and enforcing official policies, procedures, and controls to ensure that the person does not underwrite, insure, or reinsure the sale, lease or provision of goods, services, technology, information, or support that could directly and significantly contribute to Iran's ability to import refined petroleum products.

Iran Threat Reduction and Syria Human Rights Act of 2012 (ITRA)

1. The Iran Threat Reduction and Syria Human Rights Act of 2012 ("ITRA"), subject to certain exceptions, requires the imposition of three (3) or more of the sanctions described in the Iran Sanctions Act with respect to a person that knowingly, on or after the date of the enactment of the Act, sells, leases, or provides to Iran goods, services, technology, or support:
   (i) any of which has a fair market value of $1,000,000 or more; or during a 12-month period, an aggregate fair market value of $5,000,000 or more; and
   (ii) the goods, services, technology or support are those that could directly and significantly con tribute to the maintenance or enhancement of Iran's capacity to:—

(a) develop petroleum resources located in Iran; or

(b) domestically produce refined petroleum products, including any direct and significant assistance for the construction, modernization, or repair of petroleum refineries or directly associated infrastructure, including port facilities, railroads, or roads, if the primary use of those facilities, railroads, or roads is for the transportation of refined petroleum products.

2. ITRA also requires that sanctions be imposed on a person that knowingly, on or after the date of the enactment of ITRA sells, leases, or provides to Iran goods, services, technology, or support :

(i) any of which has a fair market value of $250,000 or more or, during a 12-month period, an aggregate fair market value of $1,000,000 or more; and

(ii) the goods, services, technology, or support are those that could directly and significantly contribute to the maintenance or expansion of Iran's domestic production of petrochemical products.

3. ITRA requires the imposition of sanctions against any person that:

(i) is a controlling beneficial owner of, or otherwise owns, operates, controls, or insures a vessel that was used to transport crude oil from Iran to another country; and

(ii) in the case of a person that is a controlling beneficial owner of the vessel had actual knowledge that the vessel was so used; or in the case of a person that otherwise owns, operates, controls, or insures the vessel, knew or should have known that the vessel was so used.

ITRA provides that the decision to impose sanctions is only to be made if there is a sufficient supply of petroleum and petroleum products produced in countries other than Iran to permit purchasers of petroleum and petroleum products from Iran to reduce significantly their purchases from Iran at the time of the transportation of the crude oil.

ITRA also provides that sanctions are not to be imposed on the transportation of crude oil from Iran if the transportation is to a country which has received a waiver granted by the United States for countries which have significantly reduced their purchases of crude oil from Iran and the waiver applies at the time of the transportation of the crude oil.

4. ITRA requires the imposition of sanctions against vessels, shipowners, and ship managers (persons who own and control vessels) if they have actual knowledge or knowingly conceal the Iranian origin of crude oil or refined petroleum products transported on vessels, including by:

(i) permitting the operator of the vessel to suspend the operation of the vessel's satellite tracking device; or

(ii) obscuring or concealing the ownership, operation, or control of the vessel by—

a. the Government of Iran;

b. the National Iranian Tanker Company (NITC) or the Islamic Republic of Iran Shipping Lines (IRISL); or

c. any other entity any other entity determined by the President to be owned or controlled by the Government of Iran or NITC or IRISL.

5. ITRA also authorizes the President, in addition to other sanctions that may be imposed,to prohibit from landing at a port in the United States for a period of up to two (2) years, a vessel owned, operated or controlled by a person, including a controlling beneficial owner, against which the President has imposed sanctions and that was used for the activity for which the President imposed those sanctions.

ITRA provides that a person is deemed to have actual knowledge that a vessel is owned, operated, or controlled by the Government of Iran or NITC, IRISL, etc. if:

(i) the International Maritime Organization vessel registration identification for the vessel is included on OFAC's List of SDNs; and

(ii) the vessel is identified by OFAC as a vessel in which the Government of Iran or another entity, such as NITC or IRISL, has an interest.

UNDER ITRA THE TERM 'IRANIAN ORIGIN' MEANS—

(i) with respect to crude oil, that the crude oil was extracted in Iran; and

(ii) with respect to a refined petroleum product, that the refined petroleum product was produced or refined in Iran.

Sanctions will not be imposed against insurers and reinsurers that provide insurance for the transportation of crude oil or refined petroleum products from Iran if it is determined that they exercised due diligence in establishing and enforcing official policies, procedures, and controls to ensure that they do not provide underwriting services or insurance or reinsurance for such transportation.

6. ITRA provides for the imposition of sanctions against any person that has exported, transferred, permitted or otherwise facilitated the transshipment of any goods, services, technology, or other items to any other person; and knew or should have known that—

(i) the export, transfer, or transshipment of the goods, services, technology, or other items would likely

result in another person exporting, transferring, transshipping, or otherwise providing the goods, services, technology, or other items to Iran; and

(ii) the export, transfer, transshipment, or other provision of the goods, services, technology, or other items to Iran would contribute materially to the ability of Iran to—

a. acquire or develop chemical, biological, or nuclear weapons or related technologies; or

b. acquire or develop destabilizing numbers and types of advanced conventional weapons.

7. ITRA requires the imposition of sanctions against a person that knowingly provides a vessel, insurance, reinsurance, or any other shipping service for the transportation to or from Iran of goods that could materially contribute to the activities of the Government of Iran with respect to the proliferation of weapons of mass destruction or support for acts of international terrorism. ITRA provides for the blocking and prohibition of all transactions in the property and interests in property of sanctioned persons located in the United States that come within the United States, or come within the possession or control of a U.S. person.

The persons against which these sanctions may be imposed are:

(i) any person that sold, leased, or provided a vessel; or provided insurance, reinsurance, or another shipping service;

(ii) any person that is a successor entity to the person referred to in (i);

(iii) any person that owns or controls the person referred to in (i) if they had actual knowledge or should have known that the person referred to in (i) provided the vessel, insurance, reinsurance, or other shipping service;

(iv) any person that is owned or controlled by, or is under common ownership or control with, the person referred to in (i), if they knowingly engaged in the provision of the vessel, insurance or reinsurance, or other shipping service.

8. ITRA requires the imposition of sanctions against a person that knowingly providesunderwriting services or insurance or reinsurance for the National Iranian Oil Company, the National Iranian Tanker Company, or a successor entity to either of these companies. Sanctions will not be imposed if the person has exercised due diligence in establishing and enforcing official policies, procedures, and controls to ensure that the person does not provide underwriting services or insurance or reinsurance for the National Iranian Oil Company, the National Iranian Tanker Company, or a successor entity.

Sanctions will not be imposed for the provision of underwriting services or insurance or reinsurance for any activity relating solely to—

(i) the provision of agricultural commodities, food, medicine, or medical devices to Iran; or

(ii) the provision of humanitarian assistance to the people of Iran.

IRAN FREEDOM AND COUNTER-PROLIFERATION ACT OF 2012 ("IFCA")

IFCA expands the category of activities by non-U.S. Persons involving Iran that could result in the imposition of sanctions against them, and provides for the blocking of the property of additional Iran sanctions targets.

IFCA is mainly designed to restrict the ability of Iran's energy, shipping, shipbuilding and port sectors to generate revenues to support nuclear proliferation activities. IFCA also seeks to curtail Iran's access to certain materials and restricts Iran's ability to use its oil revenues.

1. IFCA requires the blocking of the property of entities and individuals that have been determined to:

(i) be a part of the energy, shipping or shipbuilding sectors of Iran;

(ii) be a port operator in Iran;

(iii) have knowingly provided significant financial, material, technological or other support to any of the foregoing persons, or to an Iranian person listed on OFAC's List of SDNs.

IFCA requires the imposition of sanctions against persons that sell, supply or transfer significant goods and services used in connection with the energy, shipping, or shipbuilding sectors of Iran, including the National Iranian Oil Company, the National Iranian Tanker Company, and the Islamic Republic of Iran Shipping Lines.

2. IFCA also provides for the imposition of sanctions against the sale, supply, or transfer of certain materials to or from Iran. IFCA requires the imposition of sanctions if the U.S. administration determines that a person knowingly sells, supplies, or transfers directly or indirectly to or from Iran:

i. a precious metal; or

ii. graphite, raw or semi-finished metals, such as aluminium and steel, coal, and software, for integrating industrial processes (the "Materials") for various purposes of:

- using the Materials as a medium for barter, swap, or any other exchange transaction,
- listing as assets of the Government of Iran

- in connection with the nuclear, military, or ballistic missile programs of Iran;
- in connection with the energy, shipping or shipbuilding sectors of Iran or any sector of the economy of Iran determined to be controlled directly or indirectly by Iran's Revolutionary Guard Corps; or
- transferring the Materials to any Iranian person appearing on OFAC's List of SDNs (other than certain Iranian financial institutions), for use in connection with the nuclear, military or ballistic missile programs of Iran, or to certain other prohibited persons.

Sanctions for the above violations/contraventions will not be imposed against persons that have exercised due diligence and established and enforced official policies, procedures and controls designed to prevent transactions which could lead to the imposition of sanctions.

3. IFCA also requires the imposition of sanctions against an entity or individual that knowingly provides underwriting services or insurance:

   (i) for any activity with respect to Iran for which sanctions have been imposed under the various Iran sanctions laws of the United States; or

   (ii) to or for any person:

   - for the benefit of any activity in the energy, shipping, or shipbuilding sectors of Iran for which sanctions are imposed under IFCA;
   - for the sale, supply or transfer to or from Iran of the Materials for which sanctions are imposed under IFCA;
     - designated as a sanctions target in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction or with Iran's support for international terrorism; or
     - to any person appearing on OFAC's List of SDNs (other than certain Iranian financial institutions, i.e., those that have not been designated for the imposition of sanctions on the basis of their involvement in nuclear proliferation, support for international terrorism, abuse of human rights).

IFCA sanctions will not be imposed in connection with the provision of underwriting services or insurance or reinsurance for the sale of agricultural commodities, food, medicine, or medical devices to Iran or for the provision of humanitarian assistance to the people of Iran.

Sanctions will also not be imposed with respect to a person that provides underwriting services or insurance or reinsurance if such a person has exercised due diligence and established and enforced official policies, procedures and controls to ensure that they do not underwrite or enter into a contract to provide insurance or reinsurance for any activity which could lead to the imposition of sanctions under IFCA.

4. IFCA requires that the U.S. Administration submit annual reports to the U.S. Congress that contain:

   (i) a list of large or otherwise significant vessels that have entered seaports in Iran controlled by Tidewater Middle East Company and information regarding the owners and operators of such vessels; and

   (ii) a list of all airports at which aircraft owned or controlled by an Iranian carrier on which sanctions have been imposed by the United States have landed.

Executive Orders 13622 and 13590

The following are considered sanctionable activities under Executive Order 13622:

(i) knowingly engaging in a significant transaction for the purchase or acquisition of petroleum or petroleum products from Iran;

(ii) knowingly engaging in a significant transaction for the purchase or acquisition of petrochemical products from Iran;

(iii) being a successor entity to a person meeting the criteria above;

(iv) owning or controlling a person meeting the criteria above, and having knowledge that the person engaged in the activities referred to above; or

(v) being owned or controlled by, or under common ownership or control with, a person meeting the criteria above, and knowingly participating in sanctionable activities.

The foregoing applies only if:

- the President determines there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial institutions; and
- there is no relevant exception from the imposition of sanctions that applies to the country with primary jurisdiction over the person.

The following are sanctionable activities under Executive Order 13590:

(a) knowingly selling, leasing, or providing to Iran goods, services, technology, or support that has a fair market value of $1,000,000 or more or that, during a 12-month period, has an aggregate fair market value of $5,000,000 or more, and that

could directly and significantly contribute to the maintenance or enhancement of Iran's ability to develop petroleum resources located in Iran;

(b) knowingly selling, leasing, or providing to Iran goods, services, technology, or support that has a fair market value of $250,000 or more or that, during a 12-month period, has an aggregate fair market value of $1,000,000 or more, and that could directly and significantly contribute to the maintenance or expansion of Iran's domestic production of petrochemical products;

(c) being a successor entity to a person referred to above;

(d) owning or controlling a person referred to above, and having actual knowledge or reason to know that the person is engaged in sanctionable activities; or

(e) being owned or controlled by, or under common ownership or control with, a person referred to above, and knowingly participating in sanctionable activities.

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The provisions outlined in this article are not exhaustive. They are merely examples of the main provisions of U.S. Secondary Iran sanctions laws that can impact the maritime insurance and the shipping sector.

Treacherous Waters

Given the present number, breadth, and complexity of U.S. laws governing U.S. sanctions against Iran, their vigorous enforcement, a relatively high risk exists that a transaction or activity in the maritime transportation sector involving Iran or an Iranian entity will implicate U.S. Iran sanctions prohibitions. Ambiguities in the law, the exercise of U.S. sovereign prerogative, and the reality that U.S. government foreign policy determinations are either not reviewable by a court or, where reviewable, given a high level of deference increase this risk.

As noted above, U.S. sanctions laws against Iran are cumulative and provide for comprehensive prohibitions on U.S. Persons and for the imposition of sanctions against a wide range of non-U.S. Persons trading with Iran, even for transactions taking place wholly outside of the United States.

Legal determinations as to whether a transaction is permitted or is a prohibited or sanctionable activity are very fact-sensitive. They also need to take into account the U.S. government policy context in which specific issues arise. Readers are therefore urged to exercise a high degree of caution and due diligence and to obtain expert guidance related to their activities involving Iran in order to help ensure that they avoid the imposition of sanctions as well as violations of the law. Judgments as to whether and how sanctions may apply to or impact a certain transaction or activity involving Iran should be made on a case-by-case basis.

With respect to voyages to and/or from Iran, U.S. shipowners and their U.S. insurers must consider and be mindful of U.S. Iran sanctions laws, such as the ITSR and the NPWMDSR, that are directly applicable to them. Non-U.S. shipowners and non-U.S. insurers must be mindful of and carefully navigate through Iran sanctions laws such as those of the European Union, the laws of countries that have implemented United Nations-mandated sanctions against Iran directly applicable to them, as well as U.S. sanctions laws falling within the Primary and/or Secondary sanctions category, even if their activity involving Iran is wholly outside of the United States and has no U.S. nexus.

The Eren Law Firm is an economic sanctions and corporate law boutique based in Washington, DC. The Firm's clients from around the world include banks and financial institutions; insurance, reinsurance and other financial services companies; natural resource extraction companies, industrial companies, marine and air transportation companies; shipowners; sovereign governments; foreign state enterprises; and individuals.

Mr. Eren and Mr. Pinter of the Firm served at the U.S. Treasury's Office of Foreign Assets Control (OFAC), the U.S. government agency that administers and enforces U.S. economic sanctions, for a combined 25 years. Since entering private law practice, respectively 11 and 10 years ago, they have devoted and continue to devote most of their time in private practice to economic sanctions issues and matters. A significant area of their practice deals with economic sanctions issues facing shipowners and maritime insurers.

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1 Statutes (legislation), Presidential Executive Orders, and regulations.

2 In some cases, such as those implicating the Iran Sanctions Act of 1996 ("ISA") (prior to its amendment by CISADA (see, below)), laws of another jurisdiction such as those of the European Union prohibited entities located within their jurisdiction from complying with the provisions of ISA and blocked ISA from taking effect within the EU.

FD&D CORNER

By: Muge Anber-Kontakis
FD&D Manager

MUGE ANBER-KONTAKIS NAMED AS FD&D MANAGER

We are proud to announce that, effective September 1, 2013, Muge Anber-Kontakis has been appointed to the position of FD&D Manager at Shipowners Claims Bureau, Inc. where she will oversee the handling of the Association's FD&D matters worldwide.

Muge has been a key member of our New York Claims Team for the past 7 years and she has anchored our FD&D service capability in that office during much of that period. Muge is an attorney admitted in both the Istanbul and New York Bars. Muge graduated from Marmara University Law School, Istanbul (LL.B.), obtained her Master of Laws degree at Hofstra University School of Law (LL.M.), and earned a Master of Science in International Transportation Management at SUNY Maritime Colleague at Fort Schuyler (M.S.). Before coming to New York, she practiced maritime law at Atamer & Karaman Law Firm, Istanbul and from 2004 to 2006, Muge worked as a foreign registered associate at the New York office of Fowler, Rodriguez & Chalos LLP.

Among her new duties will be the continuation of our FD&D Corner column

Please join us in welcoming Muge to this new position and in congratulating her on this promotion.

"THOSE WHO ARE LATE, DO NOT GET FRUIT CUP" - UNTIMELY HIRE PAYMENTS BY CHARTERER AND THE OWNER'S RIGHT TO WITHDRAW

In Kuwait Rocks Co v AMN Bulkcarriers Inc (The "ASTRA") [2013] EWHC 865 (Comm. April 18, 2013), the Commercial Court ruled that the charterer's obligation to make punctual payment of hire in clause 5 of the NYPE 1946 form is a condition whether or not there is an anti-technicality clause in the charterparty.

By way of background, the "ASTRA" was chartered on amended NYPE 1946 form for a period of 5 years from 6th October 2008. Clause 5 of the charterparty gave the owners the usual liberty to withdraw the vessel if hire was not paid regularly and punctually. The charterparty also contained an anti-technicality clause which required owners to give charterers two banking days' notice of a failure to pay hire. Prevailing markets rates declines and the charterer encountered financial difficulties which affected its ability to promptly pay hire. Charterer initially sought a reduction in the rate and threatened that, if owners did not agree, charterer would declare bankruptcy. Charterer failed to pay the June 1, 2009 hire installment and owners served an anti-technicality notice. In the end, owners did not withdraw the vessel but rather agreed to reduce hire for a period of one year.

On July 2, 2010, charterers again failed to pay hire and instead asked for more time to pay and for the discounted rate agreed the previous year to be extended. A short-term compromise was agreed, but charterer thereafter failed to timely pay the renegotiated hire installments. Owners served another anti-technicality notice and charterers paid two of three outstanding installments at the reduced rate. Because one installment remained unpaid, owners served a fresh anti-technicality notice and, on August 4, 2010, owners withdrew the vessel and terminated the charterparty.

Owners claimed damages to recover their future loss of earnings for the remainder of the charter period. They argued that the charterers were in breach of a condition of the charterparty by not paying hire on time, alternatively that charterer's conduct amounted to a renunciation or repudiatory breach of the charterparty.

The London arbitrators agreed with owners that charterers had committed a renunciation or repudiatory breach. Accordingly, the Tribunal found that owners were entitled to terminate the charterparty and claim damages for their loss of future earnings. However, the tribunal rejected the argument that charterers had been in breach of a condition of the charterparty by failing to pay hire in a timely manner. In the Tribunal's view, the generally accepted position under English law was that a failure to pay hire was not a breach of condition.

The matter came before the Commercial Court on appeal under section 69 of the Arbitration Act 1996 and

Justice Flaux upheld the findings of the Tribunal on renunciation and repudiatory breach. As such, it was not strictly necessary for him to consider whether the obligation to pay hire under a time charter is a condition; however, both parties' counsel apparently "urged him" to decide the point and he did, surprisingly, in the affirmative.

Justice Flaux justified his decision on several grounds. First, he thought it significant that there is a right to withdraw the vessel under the clause 5 of the NYPE 1946 form even if the failure to pay hire is not otherwise sufficiently serious to be repudiatory. Secondly, he relied upon a general accepted contractual principle that, where there is a provision requiring payment to be made by a certain time, time is usually considered of the essence. Although Justice Flaux distinguished The Brimnes [1972] 2 Lloyd's Rep 465 on the basis that there was no anti-technicality clause in that charterparty, he was of the view that the payment of hire was a condition even if no anti-technicality clause was included in the contract. Thirdly, he thought that treating the obligation as a condition would bring certainty whereas treating it as an innominate term would mean that owners are forced to "wait and see" if charterers' conduct becomes sufficiently serious to amount to a renunciation or repudiatory breach. Lastly, he considered that there was sufficient support, albeit dictum or obiter, in the authorities to justify the conclusion.

Comments: Although Justice Flaux decision that the payment of hire is a condition is, strictly speaking, obiter, it is the most comprehensive (and, obviously, the most recent) consideration of the topic of timely payment of hire and anti-technicality clauses in the law reports. It is likely that future arbitration tribunals facing this issue will give weight and follow the approach advocated by Justice Flaux in this decision, particularly if it fits with their own instincts and sympathies. For claims currently being arbitrated in London where charterers have missed only one or a very small number of hire installments, owners will no doubt wish to amend to rely on a breach of condition, f such a claim has not already been pleaded. Their prospects of succeeding in such claims are no doubt much improved following The Astra.

This is a favorable decision for vessel owners insofar as it places tremendous pressure upon charterers to incur significant risk and liability if one installment of hire is paid fractionally late. In the wake of this decision and in theory, owners will be entitled to terminate and claim damages representing the difference between the market and charter rates for the duration of the charter period. However, there is no guarantee that the Astra decision will be remain unscathed should this issue once again be considered on appeal. Accordingly, it would be unsafe for an owner to proceed on the assumption that he will be entitled to recover damages for lost future earnings if he elects to terminate the charterparty if only one hire installment of hire is paid late under a long-term charter. In reality, if the sums involved justify it, one can expect a charterer to press the issue towards appeal in the hope of neutralizing the tenets of Justice Flaux's decision and underlying reasoning.

"YES, IT'S JUST THAT SIMPLE" - FEDERAL MARITIME COMMON LAW APPLIES INSTEAD OF CHARTER PARTY'S CHOICE OF LAW PROVISION IN RULE B ATTACHMENT ALTER-EGO PROCEEDING

The United States Court Of Appeals for the Second Circuit ("Second Circuit"), Blue Whale Corp. v. Grand China Shipping Development Co., 13-0192-CV, 2013 WL 3598839 (2d Cir. July 16, 2013), recently issued an important decision regarding the application of choice of law principles to an alter ego claim asserted by way of a Rule B attachment proceeding in aid of a London arbitration proceeding.

In Blue Whale Corp., the plaintiff brought a Rule B action in New York seeking to attach property of a Chinese entity located in New York on the theory that the entity was the "alter ego" of another Chinese entity, as well as to "pierce the corporate veil." The plaintiff, Blue Whale, had been engaged in a London arbitration proceeding with Grand China Shipping to resolve a charter party dispute. In anticipation of an arbitration award against Grand China Shipping, Blue Whale brought a Rule B claim in the S.D.N.Y. against Grand China's alleged alter ego, HNA Group Company Ltd.

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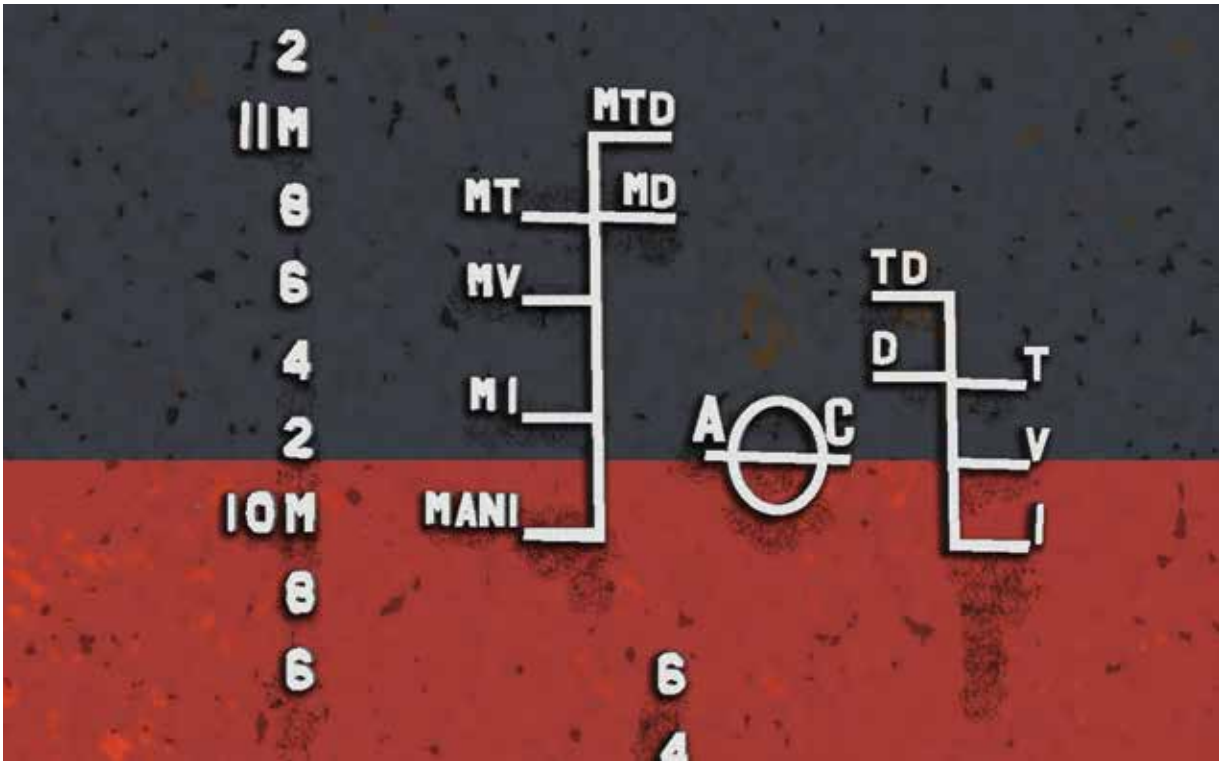
("HNA"), seeking to attach approximately $1.3 million worth of HNA's assets in New York.

After HNA's property had been attached by the plaintiff, the alleged alter-ego moved to vacate the attachment. It argued that the English law of veil-piercing should apply because the dispute arose out of a charter party that contained a London arbitration clause specifying the application of English law. Under the more stringent English veil-piercing law, the plaintiff's allegations were insufficient to state an alter ego claim. The district court accepted HNA's argument in the absence of authority presented to the contrary and determined that Blue Whale had insufficiently alleged that HNA was an alter ego of Grand China. As a result of the plaintiff's failure to allege a prima facie alter ego claim under English law, the SDNY vacated the Rule B attachment. The plaintiff appealed.

On appeal, the United States Court of Appeals for the Second Circuit ("Second Circuit") held that that Blue Whale's alter-ego claim was collateral to the contractual dispute and that English law did not govern. Instead, it applied a federal maritime conflicts-of-law analysis to determine the applicable law for the alter ego claim. In doing so, the Second Circuit vacated the SDNY's order and remanded with instructions for the SDNY to reevaluate the prima facie validity of Blue Whale's claims under federal common law. In reaching this conclusion, the Second Circuit commented that Blue Whale's claim against HNA sounds in admiralty because it arose from this maritime contract – however, the substance of the attachment claim concerns whether HNA is an alter ego of Grand China. This corporate identity inquiry is indeed distant from the dispute over the charter party's provisions regarding the transport of iron ore. For this reason, we find that the issue of piercing the corporate veil is collateral to the contract, and thus this Court is not bound by the choice of law provision [in the charter party]." (Citations omitted).

Comment: As a general rule, the Blue Whale decision stands for the proposition that when a maritime defendant has property in the United States that can be attached via Rule B or executed against as part of the creditor's judgment enforcement efforts, the more lenient U.S. maritime veil-piercing test will continue to apply in most cases. Alter ego claims are still complex causes of action to successfully run. However, this choice of law analysis set forth by the Second Circuit should eliminate confusion and prompt a more uniform approach to simplify the judicial process required for Rule B attachments.



Eagle Ocean Marine

Eagle Ocean Marine is a fixed premium insurance product designed to meet the needs of those shipowners who operate smaller vessels and who require financial limits of cover lower than that provided by a full mutual entry with the American Club.

The facility was initially established by Eagle Ocean Agencies, Inc. (a sister company to Shipowners Claims Bureau, Inc.) in July 2011. The risks were underwritten 100% by Lloyd's underwriters and the facility was able to offer cover of up to US$ 25,000,000 per risk.

In July 2011 the facility was restructured with the American Club providing the primary security, supported by an extensive quota-share reinsurance program through the Lloyd's market in London. This change in structure has brought considerable advantages to Eagle Ocean Marine's clients, since American Club blue cards can now be issued (with world-wide acceptance) and Club letters of undertaking can be utilised to secure claims and prevent the arrest of vessels.

Eagle Ocean Marine now has the capacity to offer full Protection & Indemnity (P&I), and Freight, Demurrage and Defence (FD&D) cover with tailored policy limits up to $50,000,000 for P&I and $2,000,000 million for FD&D, to suit individual ship owners requirements. The insurance is available to ship owners trading worldwide save for those who trade exclusively within US waters or who are domiciled in the US. Furthermore, cover is limited to vessels which do not exceed 12,500 GT.

The facility is intended to operate in parallel with the Club's mutual business, allowing Eagle Ocean Marine to draw upon the wealth of professional expertise derived from broad industry experience, the associated skills of the management company in New York and its satellite offices in London, Piraeus, Hong Kong and Shanghai. The American Club's global network of correspondents is available to Eagle Ocean Marine's policy holders to provide assistance and guidance locally as and when required.

Eagle Ocean Marine policy holders are not Members of the American Club and hold no voting rights. Shipowners insured with Eagle Ocean Marine are issued with certificates of insurance on American Club paper evidencing the policy terms provided by the facility. This arrangement has proved very successful as the American Club is globally recognised as a provider of first class insurance which provides EOM with a competitive advantage over its competitors in the fixed premium market.

Since its inception, Eagle Ocean Marine has enjoyed stable growth, building its book of business while maintaining a conservative approach to underwriting. The American Club's recent S&P upgrade from BB+ to BBB- (Stable) is expected to augment the Eagle Ocean Marine product, fostering further growth over the next twelve months.

To date Eagle Ocean Marine's tonnage by vessel type is broadly based, with tankers, general cargo vessels, bulkers and tug and barge business forming the main sectors in approximately equal shares. About 65% of its current business is from Asia, the remainder coming mostly from Europe, Latin America and Africa.

Further details of Eagle Ocean Marine may be obtained at its website (www.eagleoceanmarine.com) including relevant details of those to whom inquiries can be addressed.

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