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CURRENTS

AMERICAN CLUB NEWS

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Management Changes

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

New York
Jennifer Fleischman Underwriting

London
Jessie Carvalho Claims

Piraeus
Andreas Maroulletis has moved from the London office

The cover and other assorted pictures in this issue were illustrated by Mr. John Steventon

American Steamship Owners Mutual
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Making Headway in 2007

Joe Hughes Chairman and CEO

The 2007 renewal season was, in most respects, like many others – energetic and highly demanding! However, it was of particular importance to the American Club since it was something of a watershed in risk retention terms, and had been prepared for over many months beforehand.

In the result, the renewal outcome was modestly satisfying and can be seen as a source of cautious optimism for the future. Taking all factors into account, the net loss of renewable, mutual P&I business over the period was about 500,000 gross tons – thoroughly respectable in the circumstances, particularly in light of the unforecast supplementary calls on the 2005 and 2006 policy years levied the previous November.

Projected annualized gross premium for 2007 on renewed business is a little under $110 million in total – somewhat under $10 million less than that for equivalent total business in 2006. This should also be seen in the context of the fleets renewed and currently entered with the American Club having a collective historical loss ratio of 66% by contrast with a loss ratio of all fleets entered in the Club for the period 2001-2006 inclusive of about 92%. This augurs well for the future.

On a rate per ton basis, renewed P&I mutual (owned) entries saw an uplift of about 8% in cash terms. However, substantial increases in deductibles were also broadly achieved. Taking these into account, an overall rating increase of about 13% from 2006 to 2007 has been obtained in global terms.

While the breakdown of tonnage by vessel type has remained broadly consistent year-on-year, Members' domiciles of management changed somewhat with a decline from 63% to 53% in the case of Europe and a commensurate increase from 17% to 27% for Asia. North America and other geographical sectors remained broadly stable.

All in all, your Managers were content with the results of the last renewal and look forward to further progress during the year. As always, the renewal was not easy and, again as always, the Club owed much to the loyalty and support of its many Members both near and far.

In its customary fashion, the American Club looks to the future with confidence and enthusiasm and remains single-mindedly determined to provide the very best of service and value for money to those whom it is privileged to insure!

Joe Hughes
Chairman and CEO
Shipowners Claims Bureau, Inc., New York

The Changing Picture of Risk:

Nothing Ventured, Nothing Gained

Mr. Tore Forsmo, Managing Director, Central Union of Marine Underwriters. Oslo, NORWAY

Over the last few years, shipping has seen a boom as never before. New fortunes are being made and old fortunes are growing larger seemingly every day. At the same time, the maritime industry is operating within a global framework of increasing complexity and risk exposures.

A large shipbuilding order book combined with relatively few vessels scheduled for scrapping has created an urgent demand for properly trained and qualified crews. The crewing issue represents a tremendous challenge for the operators of new vessels, operators struggling to retain crew on existing vessels, and the entire industry, which cannot afford to cannibalize manpower supply. For marine underwriters, the scarcity of experienced qualified seafarers remains a significant challenge.

''there are increasingly severe consequences for environmental discharge and loss of human lives- including criminal sentencing and higher limits on liability''

Another emerging issue is the ever expanding size of today's vessels. We are seeing cruise vessels bordering on 6000 pax, while the latest generation of container vessels have a capacity of 13,000 TEUs. These massive vessels represent huge risk exposures per keel, which is creating a growing concern among insurers.

At the same time, legal and operational restrictions have become more complex. With industry organisations, individual companies and regulators adopting zero-tolerance policies, there are increasingly severe consequences for environmental discharge and loss of human lives - including criminal sentencing and higher limits on liability. Today, seafarers and ship operators may face jail time for accidents – even when their conduct was appropriate during critical situations. Indeed, before long, we may find more sailors behind bars than in bars. Shipowners are already facing a trend where experienced masters, first officers and chief engineers leave the ships for jobs on land simply because they no longer want to have the threat of criminal investigation hanging over them for accidents they did their best to avoid. While governments are constantly working for safer shipping both for people onboard the ships and the environment, the criminalisation of seafarers is threatening to drive the best seafarers off the ships which is undoubtedly counterproductive to safer shipping. The increasing volume of cargo and number of both seafarers and passengers at sea, combined with more stringent environmental regulations, will challenge underwriters to carry more risk with increasing liability.

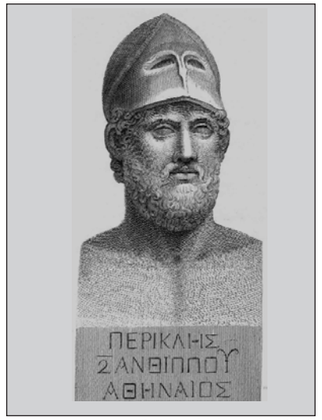
The European Solvency II and new solvency regimes will introduce requirements on insurers to properly address the risks and improve the management of their capital. This may have a substantial impact on our industry and the way we run our business.

A greater focus on Corporate Social Responsibility, Corporate Governance, business ethics and transparency will continue to influence how underwriters interact with the shipping industry.

While all these issues are changing the picture of risk, the question remains: Should marine insurers view these changes as a threat or an opportunity?

"We are capable of taking risks and assessing them beforehand. Others may be brave out of ignorance, but when they stop to think, they begin to fear." These words are just as true about the Central Union of Marine Underwriters (CEFOR) and our Scandinavian market today as they were more than 2400 years ago, when Pericles in his famous Funeral Oration to the fallen Athenians described their remarkable ability to assess risks before making decisions.

Marine insurance is all about how to correctly identify, analyze, prize and transfer marine risks. Our business is not to avoid risk, but deal professionally with the risks we and our clients face at any given time. Indeed, the ability to define what may happen in the future, assess associated risks and uncertainties, and to choose among alternatives lies at the heart of any risk management system.



Pericles of Athens 495-429BC

The word 'risk' derives from the Italian word *risicare*, which means 'to dare'. The notion of risk is therefore related to 'opportunity' rather than to 'threat'. By understanding risk, measuring it and weighing its consequences, risk-taking has become one of the prime catalysts that drive modern society. Our development and constant progress is fundamentally based on our ability to understand and properly handle risk. Risk is not something to be feared, but rather, represents potential and opportunity for growth and prosperity.

We only fear what we do not know. To put it another way: Nothing ventured, nothing gained. Chi non risica, non rosica!

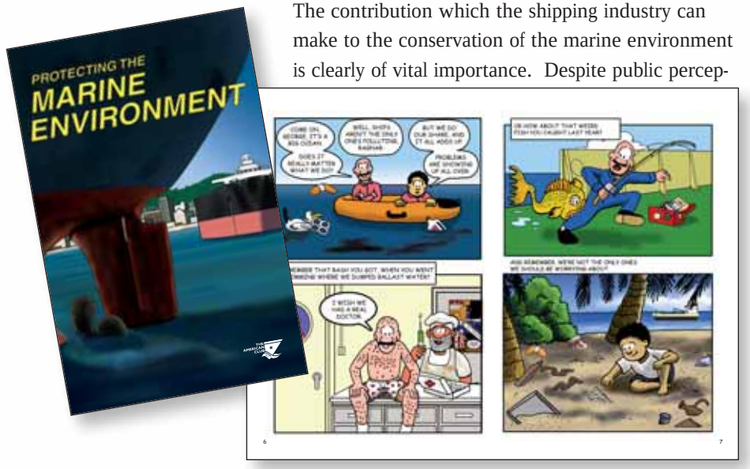
Comic relief on protecting the marine environment

New publication directed at seafarers hits the mark on environmental matters

Dr. William Moore, Vice President, Loss Prevention, Risk Control & Technical Services, Shipowners Claims Bureau, Inc., New York

The Club is pleased to announce its latest comic book publication: Protecting the Marine Environment. Environmental protection, as an issue of universal concern, has in recent times come to transcend purely scientific attention and now figures prominently on the socio-political agenda of the international community at large.

The contribution which the shipping industry can make to the conservation of the marine environment is clearly of vital importance. Despite public perceptions to the contrary, reinforced by a popular media often hostile to maritime enterprise, the shipping industry's record in avoiding ship-sourced pollution is thoroughly creditable.



However, this reality cannot exonerate the maritime transportation industry from the imperative of seeking constant improvement in this area, nor has it had any influence on the implementation by coastal states of increasingly Draconian measures aimed at shipowners and seafarers alike.

Against this background, and in development of the American Club's policy of seeking to extend safety and loss prevention awareness among both onboard and shoreside personnel, it is hoped that this publication will contribute to the continuing protection of our common oceanic heritage.

The Managers believe that comic books like Protecting the Marine Environment, as with its predecessors Preventing Fatigue and Shipboard Safety, provide a user-friendly message for seafarers. The primary purpose of Protecting the Marine Environment is to raise seafarer awareness of the fact that everything which goes on to a ship such as people, cargo, fuel, stores, etc. should also come off the ship in an environmentally friendly way.

As always, the Club would like to pay its gratitude to Mr. John Steventon (in picture) from Parsippany, NJ for his fine artwork in preparing Protecting the Marine Environment.

As was the case with its predecessor publications, your Managers have made copies of Protecting the Marine Environment available free of charge to Members.

How to Reduce Illness Claims: A Medical Perspective from the Philippines

Pasqualito D. Gutay, M.D., Medical Director, SuperCare Medical Services, Inc., Manila

The Problem

The circumstances in navigation make seafaring one of the most hazardous occupations and one with the least available medical care. The unhealthy lifestyle practices of sailors: high fat/sodium diet, cigarette smoking, intake of alcohol and lack of exercise coupled with the working conditions and the unavailability of medical care at sea is causing a high morbidity rate among sailors as shown in most studies.

These realities translate to incidences of repatriations, medical claims, decreased productivity, hampered voyages and sometimes court cases.

This poses a challenge to clinics in the Philippines which perform the medical screening of no less than 20% of the world's sailors.

The Facts

Hypertension, heart disease, diabetes, urinary tract stone and gallstone figure high and frequent in both Philippine National Morbidity Statistics and Repatriation and Medical Claims Statistics. These are however not usually detected during the Pre-Employment Medical Examination (PEME). The commonly applied PEME package on Filipino sailors, which is the Department of Health (DOH) recom-

TEN LEADING CAUSES OF MORBIDITY No. & Rate/100,000
Population PHILIPPINES, 2003

Causes	Male	Female	Both Sexes	
	Rate**	Rate**	Number	Rate**
1. Acute Lower RTI and Pneumonia	770.9	748.2	674,386	861.2
2. Diarrhea	695.0	655.0	615,692	786.2
3. Bronchitis/Bronchiolitis	639.6	677.0	604,107	771.4
4. Influenza	455.4	503.1	431,216	550.6
5. Hypertension	325.4	420.7	325,390	415.5
6. TB Respiratory	126.4	84.0	92,079	117.9
7. Heart Diseases	28.8	29.2	30,398	38.8
8. Malaria	41.1	30.4	28,549	36.5
9. Chickenpox	30.3	30.4	26,137	33.4
10. Measles	30.2	30.4	25,535	32.6

Source: Philippines Department of Health [www.doh.gov.ph]

TEN MOST COMMON CAUSES OF MEDICAL REPATRIATIONS AMONG 8,124 FILIPINO SAILORS (1998-2005):

ILLNESSES	INJURIES
1. Appendicitis	1. Disc Herniation
2. Urinary Tract Stone	2. Lumbosacral Strain
3. Hypertension	3. Lacerations
4. Inguinal Hernia	4. Burns
5. Gastritis	5. Contusions
6. Gallstone	6. Crushing Injury
7. Hemorrhoids	7. Traumatic Amputations
8. Cardiac Diseases	8. Ligament Knee Injury
9. Cerebrovascular Diseases	9. Eye Injury
10.Diabetes Mellitus	10. Sprain

Source: "Medical Repatriation Cases Can be Avoided," Swedish Club

TEN MOST COMMON CAUSES OF PARTIAL/PERMANENT DISABILITY AMONG 8,124 FILIPINO SAILORS (1998-2005):

1. Disc Herniation
2. Fractures
3. Traumatic Amputation
4. Cardiovascular Diseases
5. Cerebrovascular Diseases
6. Malignancy
7. Diabetes Mellitus
8. Burns
9. Ligament Tear
10. Hearing Loss

Source: "Medical Repatriation Cases Can be Avoided," Swedish Club

mended 8 basic PEME package for seafarers, is limited to a few medical tests. This package keeps PEME expenditures to a minimum but is not cost effective as it leaves undetected a lot of pre-existing medical conditions which can lead to medical repatriations and necessitate medical care during the course of employment.

The kind and frequency of injuries sustained in the maritime workplace depend on the nature of the work, the condition and potential hazards of the equipment used, and the level of training given to the seafarers. According to the UK Maritime and Coast Guard Agency, 80% of maritime accidents are secondary to human error despite advances in navigation technology. Expectedly, in a study done by the Institute of Maritime & Tropical Medicine in Poland it was concluded that seafarers have higher mean annual rates of mortality (130.6) and fatal accident (67.8) per 100,000 compared to the male population of the same age group (20-59) who are employed on land. Causes of occupation-related injuries can be ascribed to fatigue from long working hours and complacency in safe working practices. Reduction in crewing level and difficulty in understanding operating manuals may also contribute to information overload among seafarers, a factor in accidents according to a study from Gilmous Research.

The Solution

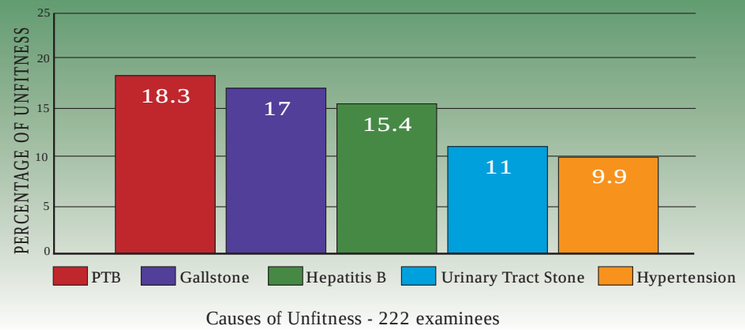
• Comprehensive Pre-Employment Medical Examination

Valuable screening procedures can be routinely incorporated in the PEME package such as ECG, lipid profile, fasting blood sugar, kidney function test, liver function test, HIV screening, hepatitis B screening, sonography, and stress test for 40 years old and above. This can raise the PEME cost to about US$100 but can dramatically decrease the incidence of medical claims. Two years after the adoption of the American Club PEME scheme in March and April 2004, the Club saved in excess of USD$4.25 million.

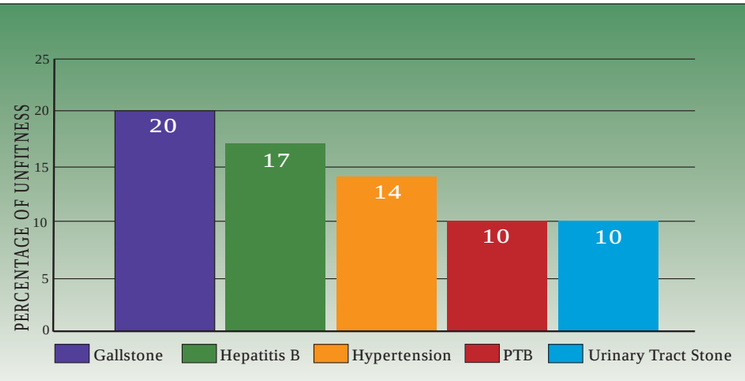
This is likewise evident in SuperCare Medical Services, Inc. PEME statistics in 2005 and 2006 when we introduced sonography and cardiovascular profiling as routine PEME procedures and as part of the American P&I Club PEME package.

The quality of a comprehensive PEME does not only protect ship owners from expenses arising from medical conditions but also promotes the health awareness of seafarers. In addition, a thorough review of

FIVE MOST COMMON CAUSES OF UNFITNESS AT SUPERCARE MEDICAL SERVICES, INC.



Source: 2005 SuperCare medical Services, Inc. PEME Statistics



Source: 2006 SuperCare medical Services, Inc. PEME Statistics

medical records both from PEME clinics and on board and a continuous update in the performance of PEME to ascertain improvements are vital factors in decreasing medically related expenditures.

• *Continuing Occupational Health and Safety Promotion*

The focal points of occupational health and safety promotion are:

a. The Workers: Seafarers

Seafarer operational quality must be constantly promoted with continuing maritime education. This can be achieved with specific trainings/seminars to upgrade their knowledge and skills in their work.

Decent pay, respectable working conditions, and a reasonable number of working hours can facilitate prevention of navigational errors.

Uplift seafarers' health and safety awareness by encouraging them to contribute to improving accident prevention measures as well as in implementing effective preventive strategies. Strengthen their awareness of primary prevention (e.g. proper back mechanics, proper posture and lifting techniques) and secondary prevention (e.g. first aid) as these are their tools at sea where medical attention is scarce.

b. The Workplace: Ship and its Equipment:

It is highly recommended that seafarers be

reminded of the use of personal protection devices at all times for the primary prevention of injuries and skin allergies as well. Seafarers have a high risk of cancer due to occupational exposures especially in the engine room (e.g. asbestos, polyaromatic hydrocarbons from oil) and on tankers (e.g. benzene, organic solvents) and other ships carrying hazardous shipment. Mechanical devices such as hoist and other lifting tools can also help in avoiding back injuries.

• *Lifestyle Modification*

a. Preparation of meals onboard must always be based on a balanced diet that is lower in fat and sodium, high in fiber, vitamins & minerals.
b. Requiring seafarers to indulge in exercise for at least 30 minutes, three times a week (e.g. jogging, swimming, sports) can contribute to stamina and physical strength.
c. Avoidance of smoking and alcohol intake minimizes the risk of cardiovascular, liver, and lung diseases.
d. Provision of time and access to facilities for good recreation & welfare at sea and in port can contribute immensely to a seafarer's well-being. This also aids the avoidance of sexual promiscuity which can lead to sexually transmitted illnesses.

As concluded by a cohort study among Danish seafarers the major causes of repatriations mainly illnesses and occupation-related injuries come hand in hand. So that active seafarers with high risk of hospitalization due to lifestyle-related diseases such as hypertension and cardiovascular disease also have an increased risk of hospitalization due to injury.

It is therefore apparent that a comprehensive PEME package, continuing occupational health and safety promotion and lifestyle modification among sailors are complimentary in benefit and should be implemented simultaneously to achieve a successful reduction in repatriations and medical claims.

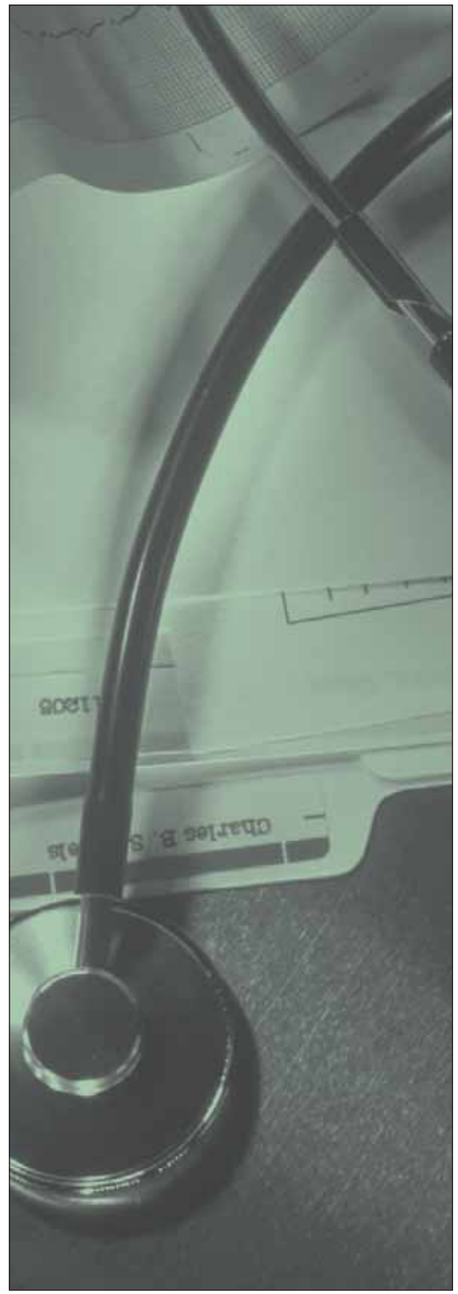
References

- Binghay, V., *Ensuring Occupational Health & Safety for Overseas Filipino Seafarers*
- Hansen, H.L. 1996. *Surveillance of Deaths on Board Danish Merchant Ships, 1986-(19)93:*
- *Implications for Prevention*. [http://www.mersante.com/abstracts4htm]
- Jaremin, B, et. al. 1997. *Death at Sea: Certain Factors Responsible for Occupational*
- *Hazard in Polish Seamen and Deep-sea Fishermen.* [http://www.mersante.com/abstracts4htm]
- Opiniano, Jeremiah. *"National Convention Called to Identify and Address Problems of Filipino Seafarers," Kasama, Vol 16. No. 3. July to September 2002.* [http://www.cpcabrisbane.org/Kasama/2002/V16n3/Seafarers.htm]
- Opiniano, Jeremiah. *"Rough Sailing for Filipino Seafarers," Cyberdyaryo. 02 October 2000.* [http://www.codewan.com.ph/CyberDyaryo/features/f2000_1002_02.htm]
- Pabico, Alecks. *Despite the Risks, Filipino Seafarers Toil in the World's Oceans. 14* – 15 July 2003. Philippine Center for Investigative Journalism (PCIJ) Website: [http://www.pcij.org/stories/2003/seafarers.html]
- Tomaszunas, S. and Z. Weclawik. 1998. *Accidents and Injuries in Polish Seafarers. Bull*
- Institute of Maritime and Tropical Medicine Gdynia. [http://www.mersante.com/abstracts4htm]
- United Filipino Seafarers (UFS). 2004. "Health and Safety: Human Error, Preventing Accidents at Sea by Improving the Conditions for Seafarers," *Tinig ng Marino*, Internet Edition. January to February 2004. [http://www.ufs.ph/tinig/janfeb04/01020415.html]
- http://www.standard-club.com/pdf/Standard Bulletin Archive/sbsep06.pdf
- www.doh.gov.ph
- http://www.swedishclub.com/tm_loss_prevention/Illness%20links/Medical%20repat.%20cases%20can%20be%20prevented_

PEME program enters its fourth year

Clubs efforts expanded to 25 approved clinics in 10 cities and 6 countries

Dr. William Moore, Vice President, Loss Prevention, Risk Control & Technical Services, Shipowners Claims Bureau, Inc., New York



The Club's Pre-Employment Medical Examination (PEME) program has now entered its fourth year in March 2007. Over the three-year period, the program has evolved in both size and scope.

In April 2004, the PEME program was initiated at Black Sea and Pacific Ocean locations, being Odessa, Ukraine and Manila, Philippines respectively, with a total of 10 clinics. Since that time, the program now has 25 approved clinics in 6 countries being, in addition to the original two, Latvia, Poland, Romania and Russia.

How has the program benefited the Club?

The program has been successful from the beginning. The reduction of seafarer illness claims was conservatively estimated at USD 2.25 million in the first 12 months, USD 2 million in the second year and another USD 2. 5 million in the third year resulting in a total of USD 6.75 million in the prevention of illness claims. These figures only include the Ukraine and Philippines, so the Managers are confident that further savings will be seen after the fourth year.

We have seen a significant reduction in illness related claims from seafarers employed from these countries. The types of medical problems range from hypertension to hepatitis to diabetes *(see the article How to Reduce Claims: A Medical Perspective* in this issue of *Currents).*

Mandatory application of the PEME program

As of February 20, 2007 compliance with the Club's PEME program has become a condition of cover.

Members employing seafarers from these countries are required to send seafarers for the PEME to one of the Club approved clinics. The following conditions now apply regarding the PEME program as stated in each relevant Certificate of Entry:

"CLAIMS IN RESPECT OF CREW – PRE-EMPLOYMENT MEDICAL EXAMINATIONS

Save to the extent that the Managers may in their absolute discretion otherwise agree, in the event that the Member intends to employ crew from a country within which the Club has established a Pre-Employment Medical Examination (PEME) program, being Latvia, the Philippines, Poland, Romania, Russia and Ukraine, the Member shall:

i ensure that such crew undergo a PEME at a clinic approved by the Managers; and

ii ensure that the Club's approved medical form is used for such PEME.

Failure to comply with either or both of the above obligations shall entitle the Managers to apply, in the settlement of any claim in respect of such crew, a deductible twice that which would otherwise have applied to such claim in the absence of such failure.

Moreover, notwithstanding the foregoing, where a Member shall have failed to comply with either or both of the above obligations, and a claim in respect of crew shall have arisen in circumstances where the medical condition of such crew giving rise to such claims would have been discovered had the Member complied with the said obligations, the Managers shall be entitled to deny, in their absolute discretion, the reimbursement of such claim or claims either in whole or in part. Whether or not a medical condition as afore said would have been discovered had the Member complied with the said obligations shall be solely and exclusively a determination of the Managers."

The primary purpose for the above clause is to encourage Members to be vigilant to ensure seafarers are sent to the Club's approved clinics to be tested to prescribed standards. These standards have been agreed in advance with the clinics in each country.

PEME program-- the future

The Club will be extending the program further in Novorossiysk and Vladivostok, Russia and Sevastopol, Ukraine later in 2007. Further consideration for expanding the PEME program into Bulgaria and other eastern European states is under consideration by the Managers.

In addition, the Club will be considering a program of mutual recognition between clinics in other countries.

Ship Recycling In India: Myth vs. Fact

By Dr. Anil Sharma, President and CEO, Global Marketing Systems, Inc., Cumberland, MD

Brief History of Ship Recycling in the Indian Sub-Continent

Spanning a little over three decades, the first recorded ship-recycling event can be traced back to Chittagong (Bangladesh) when a 20,000 DWT vessel was driven ashore by the devastating tidal bore of 1965. Seven years later, beginning 1972, ship-recycling activities in Chittagong commenced on a regular basis. It was during this time that Pakistan is believed to have scrapped 2 – 3 ships as well.

India was the last to jump on to the ship recycling bandwagon. Prior to 1979, ship-recycling activities were limited to recycling barges and small sized vessels. However during the 1980s, the importance of ship recycling, as a potential source of raw material for the domestic steel industry increased and the Indian Government began evaluating potential ship recycling sites. Eventually, Alang, located on the west coast of India, was selected as the primary location.

Today, with more than 175 ship-recycling yards, Alang is considered to be the largest ship recycling market in the world.

More than 5,000 ships have been scrapped at Alang so far generating steel output in excess of 30 million tons. In an average year, Alang recycles about 400 ships with annual sales turnover from this activity of about of about USD 750 million. At full operating capacity, the ship-recycling industry employs over 50,000 workers. In 1999, Alang recycled more than 3 million tons of ship steel.

Maligned Image

Ever since Gary Cohn and Will Englund published their Pulitzer award winning series of reports in the Baltimore Sun in 1998, entitled "The Shipbreakers", the Indian Ship Recycling Industry (also known as the Ship Breaking Industry) has been attacked relentlessly by environmental organizations (like Greenpeace) and the media, for the abuse of worker health and the environment.

During the founding years of the industry, several of these accusations were, perhaps, meritorious. Greenpeace and the western media did an excellent job in drawing the attention of the international shipping community to some of the much-needed changes. Fortunately, the ship recycling industry responded positively to these attacks. The Gujarat

Maritime Board (GMB) – the government agency overseeing the Ship-recycling Industry at Alang - provided the impetus for change. In spite of the fact that there were no grants or cash incentives available to the ship recyclers, about seven years ago, ship-recyclers initiated the slow, but gradual turn towards responsible ship recycling.

Ironically, the western world remains oblivious to these changes. On the contrary, dated photographs and body of research continues to find its way into mainstream media. An attempt is made here to address the key myths that still persist about the Indian ship-recycling industry.

Myths vs. Facts - Ship Recycling in India

Myth #1: One death a day!

Fact: 10 casualties since 2004.

Several years ago, at the first international conference on Ship Recycling in Netherlands, Greenpeace unfurled banners and posters alleging “ONE DEATH A DAY” at Alang. When challenged for the source and authenticity of this information, Greenpeace was unable to produce a verifiable source of this information. Consequently, the banners were removed. Yet, photographers present at the conference took pictures of this banner and published them in some of their respective dailies and magazines. Together with catchy slogans (as above), the perception of ‘killing’ fields of Alang emerged. The damage had been done!

In reality, the above allegation is untrue and without merit. Alang has an enviable safety record amongst most major industries in India. Sadly, accidents do happen. While even one death is one too many, hundreds of vessels are scrapped at Alang safely.

Total casualties of workers in 2004-2005 and 2005-2006 amount to three and seven (five due to fire onboard one vessel) respectively. To put these numbers in some perspective, according to the March 12, 2007 issue of TIME magazine, “officially 5,000 Chinese died in mining accidents last year. Unofficially, nobody knows”.

Myth #2: “Half-naked” workers, who work bare-handed, do Ship-recycling in India.

Fact: See Pictures.

Workers at ship-recycling yards are mandated to wear solid roof helmets, high shoes with tough PVC soles and elbow reaching fire resistant gloves. During cutting of vessels, each worker is seen wearing masks and eye goggles to protect their eyes and face from torch glows and flares.

Monthly health camps are conducted to ensure worker health and safety. The health camps include free check up of eyes, ears and other vital organs of recycling yard workers and their families. Workers are specially monitored for potential respiratory diseases.

Workers also undergo basic and advanced training in their respective area of work. Recognized training institutes and the Gujarat Maritime Board (GMB) certify this training program. Unless the worker is adequately trained and certified, he or she is not allowed to work at the recycling yards. This code is strictly enforced by the local regulatory bodies and adhered to by the ship recyclers.

Wages of workers at the Alang recycling yards are 2.5 times more than the average worker salary in the construction or mining industry.

Sadly, pictures of malnourished men, old women and children working at Alang yards continue to be published in Western media, even today. Photos of women and children breaking asbestos with bare hands draw attention to and sell biased positions.

Myth #3: Ship recycling in India is unlicensed and uncertified, still locked in rudimentary methods of 25 years ago.

Fact: Today, 22 recycling yards at Alang are ISO 14001 and OHSAS 18001 compliant (a Quality Systems and Environmental and Safety Accreditation). Additionally, four yards are ISO 9001 compliant. The list of ISO and OHSAS certified yards continue to grow rapidly.

GMB provides the licenses to ship recyclers to run recycling yards and therefore plays an active role in the day-to-day affairs of those yards. Additionally, there are more than 10 regulatory and licensing bodies that monitor ship-recycling activities at Alang. The State Maritime Board (SMB) and the Gujarat State Pollution Control Board (GSPCB) duly certify each recycling yard at Alang to recycle ships.

Myth #4: Green ship recycling and India are mutually exclusive.

Fact: There is a popular but erroneous belief in the western world that green ship recycling can only take place by the use of government cash incentives. Since no such subsidies are available to ship recyclers in India, most people imply that this means green ship recycling cannot be done in India.

The fact is that most of the ISO certified yards at Alang are capable of green ship recycling. GMB has invested millions of rupees to create facilities for the safe disposal of hazardous waste generated from ship recycling activities. Separate landfills have been created for glass wool, asbestos, sludge, oil wastes and other hazardous materials. An independent environmental agency has been contracted by GMB to oversee the handling/disposal of hazardous wastes. This agency strictly implements the guidelines laid down by the Supreme Court of India for the disposal of hazardous wastes. In the event of non – compliance by a ship recycler, the agency makes a prompt action report to GMB, which then in turn initiates disciplinary action against the ship recycler or the contractor (as the case may be).

Prior to making a decision on where to recycle their vessel, last year STOLT NIELSEN sent their own inspectors to Alang to determine if local yards could implement green ship recycling processes and scrap ships, while safeguarding worker health and safety. Several yards in India were vetted and approved by the ship owner. As a result, the vessel was finally sold to India.

When western surveyors visit ship-recycling yards at Alang, they are often amazed to find things different from what they had presumed to be the case. Indian yards continue to develop programs in line with IMO and ILO guidelines. Several yards are now capable of recycling vessels as per IMO guidelines.

Myth #5: Ship owners do not sell their vessels directly to ship recyclers in India with the intention to “escape” their legal responsibilities.

Fact: The vast majority of ships sold for recycling today are sold via “cash buyers”. Cash buyers are NOT brokers. They are traders. They buy ships on their account and then resell these to the ship recyclers. Like a wholesaler or a distributor of goods in traditional industries, cash buyers are specialists of ship recycling markets and help in the effective distribution of vessels amongst the various ship recycling markets.

Due to foreign currency restrictions in countries like India, Pakistan and Bangladesh ship recyclers can only pay for the vessel basis a Letter of Credit (LC). Most ship owners are not comfortable negotiating a LC from a bank and a country, with whom they have little experience. Cash buyers bridge the financial risks of the transaction for the owners by paying cash for the vessel. In turn, they have the financial capability to negotiate local LCs.

Additionally, cash buyers often buy ships from owners on simple ‘as is where is’ terms. Later, they put their own crew and management in place, re-flag the vessel under their ownership and steam it to the ship recycling yards. This enables ship owners to conduct a prompt sale, and avoid the hassles and the risks associated by delivering the ship to a yard in India.

Who is Global Marketing Systems, Inc.?

Incorporated in 1992, Global Marketing Systems, Inc. (GMS) is a Maryland (USA) based corporation and the largest CASH BUYER of ships for recycling in the world. GMS negotiates the sale of ships to all of the non-subsidized, revenue-paying recycling markets of the world viz. India, Bangladesh, Pakistan, Turkey and China. GMS is proud to be the world's FIRST and ONLY ISO 9001:2000 Certified Cash buyer. GMS has negotiated the sale of more than 800 ships so far. The company averages the sale of more than 100 ships for demolition each year.

For additional information on cash buying, please visit: www.gmsinc.net. Any allegation that portrays the sale of the vessel through a cash buyer, as a means to circumvent the legal responsibilities of the ship owner, is simply wrong.

Myth #6: A ship earmarked for scrapping is a liability.

Fact: Vessels are sold today for scrap, often at twice the price at which the ship may have been bought by the current owners 6-7 years ago! The average scrap price of a Suezmax tanker in the Indian subcontinent is about USD 10 million.

Ship recycling is effective in India because as a growing economy, India has a huge appetite for various grades of steel. The use of ship steel is much more cost effective and environmentally friendly than turning iron ore into steel. Generators from ships are used to generate electricity for industrial and agricultural use. In short, India has developed a reuse market for every nut, bolt and the kitchen sink found onboard the vessel.

Myth #7: Effective ship recycling solutions can only be found in Europe and western countries.

Fact: Based on the information provided by Greenpeace and other similar agencies, several bureaucrats now believe that effective ship recycling requires a European solution. However, the industry has provided several "real life" examples that clearly demonstrate that this is not the answer. SANDRIEN, OTOPAN, and LE CLEMENCEAU, are cases of ships that have cost their respective countries and municipalities, millions of dollars and yet the problems have not been resolved.

The current business paradigm demonstrates that it is easier to practice effective ship recycling practices in a country that has already created a value for an asset, rather than create an entire industry in a country where the asset itself may be considered a liability

Myth #8: The media does a fair and balanced reporting on ship recycling.

Facts: Very aggressive, well funded and media savvy green lobby.

Mainstream media continue to give wide coverage to articles and reports that berate the ship recycling industry in the Indian subcontinent. Most of the stories appear to convey the message that the only solution for effective ship recycling is a "European solution". For example, in May 2007, Lloyd's List has scheduled a two-day conference on "ship recycling" in London. Strangely, the speaker list does not show a single speaker in the two-day conference that will represent the ship recycling Industry in the Indian sub-continent. Imagine, a two-day conference on ship recycling and yet no one from the industry that controls about 95 percent of the ships that are recycled in the world today! As a result, the conference is likely to present a forum that will continue to be very critical of the ship recycling industry in India. These discussions are then likely to find wide coverage in the subsequent issues of Lloyd's List.

Strange as it may sound, unlike any other industry in the western world, the ship recycling industry does not have an international trade association, which represents the interests of the ship recycling industry. In light of the above, there are no media savvy individuals that can get the message of the industry across to policy makers, bureaucrats, media and the public at large.

Conclusion

The gap between perception and reality is perhaps the widest in the ship recycling industry than any other industry in the modern world. If the shipping fraternity does not take the initiative to work together and find practical solutions, then the day will arrive soon, when a ship for scrap is indeed a liability and not an asset.

The industry should be asking itself:

"Will the shipping community be better served by killing the ship recycling industry in the Indian subcontinent?"

Mandatory ship recycling convention is coming our way!

IMO making progress on mandatory recycling convention for adoption in 2008-2009 biennium

Dr. William Moore, Vice President, Loss Prevention, Risk Control & Technical Services, Shipowners Claims Bureau, Inc., New York

The International Maritime Organization (IMO) has undertaken the task of drafting a convention on ship recycling designed to embrace shore-based recycling activities in a manner aimed at accommodating global concerns within a legally binding framework.

It has been agreed that the instrument on ship recycling should include regulations concerning the design, construction, operation and preparation of ships so as to facilitate safe and environmentally sound recycling, without compromising the safety and operational efficiency of ships; the operation of ship recycling facilities in a safe and environmentally sound manner; and the establishment of an appropriate enforcement mechanism for ship recycling in the form of certification and reporting requirements.

In December 2005, the IMO Assembly commissioned the Marine Environment Protection Committee (MEPC) to develop an instrument, to be completed in the 2008-09 biennium, which would include the above key elements.

The Assembly has asked for an effective solution to the issue of ship recycling, which will minimize, in the most effective, efficient and sustainable way, the environmental, occupational health and safety risks related to ship recycling, taking into account the particular characteristics of world maritime transport and the need for securing the smooth withdrawal of ships that have reached the end of their operating lives.

The Managers will keep Members informed of developments in drafting of the ship recycling convention as events unfold. Updates from both the IMO Maritime Safety Committee and MEPC can be found at the American Club website at www.american-club.com under the heading of Loss Prevention.

HATCH COVERS-AN OPEN & SHUT CASE

John Poulson, Noble Denton, New York and Richard Gayton, Shipowners Claims Bureau, Inc. New York

The largest proportion of claims on the Club is comprised of various damages to cargo, accounting for a huge 60% of all claims values. Of this figure, the most frequent claim is probably for shortage typically of bagged or “break-bulk” cargoes. However the most expensive claims arise from inadvertent wetting of bulk cargoes. The most common cause of the wetting of these cargoes is leakage and ingress of water through the vessel’s hatch covers.

The design and construction of hatch covers has developed over the years but surprisingly has not changed that much. Originally, wooden sailing ships’ hatch covers consisted of wooden boards and canvas covers that were securely fastened after loading with the knowledge that they would not need to be opened again for months. The design and construction of the hatches on early steel built vessels did not change very much and still relied upon small coamings, pontoons and layers of tarpaulins with wedges etc to form weathertight covers for the holds. Coupled with the relatively large freeboards that vessels were then assigned, this configuration was still in use till the end of the 1950’s and early 1960’s.

Changes in vessel service and design in the early 1960’s, however, led to reduced manning levels and placed more emphasis on faster turnaround in port. It was no longer acceptable to “batten down the hatches” for weeks on end and then have weeks in port during which to discharge. The advent of containerization was also about to render traditional arrangements obsolete.

Although the pontoon and tarpaulin arrangement had been a good servant, things had to change and like most things a compromise had to be found. Enter the “Macgregor” hatch cover.

A view from the bridge. Conditions like this will find weaknesses in any design of hatch cover

The “Macgregor” hatch has seen evolution through various designs on a theme of hinged and folding steel panels with rubber seals which are intended to be quickly opened and closed in port and also securable so as form a “weathertight” seal against the elements for sea passages. This type of hatch cover requires regular maintenance by personnel experienced in their operation. Misalignment problems may be experienced if the connecting chains are allowed to stretch and remain un-checked resulting in the potential for water ingress to the cargo hold. The condition of the hatch cover packing is also of great importance and as a general rule packing that is permanently imprinted by more than 10 mm, or has hardened due to age, should be considered as defective and be subject to renewal. Renewal of small sections of packing should also be avoided as this greatly increases the chance of non-conformity and potential leakage. There are various pre-shaped forms of linear packing rubber and it is important that the correct type is used. Full runs should be renewed where possible and any joints properly scarfed in.

A day in the life of a hatch cover

Worn packing additionally sealed with mastic and foam.

Lack of compression of the rubber hatch packing can cause leakage. Possible causes of such lack of compression include damaged or corroded compression bars, damaged, missing or misadjusted cleats and worn cleat washers.

Also of concern are the hatch coaming drains. These need to be kept clear. Coaming drains are normally fitted with a float type non-return valve. These need to be regularly checked as failure of the non-return valve may also result in water ingress to the cargo hold. It is also important that coamings are swept clean following cargo operations as left over debris can prevent an effective seal

Some charterers insist on additional measures to help seal steel cargo hatch covers against possible water ingress. These methods include the use of Ramnek tape, mastic or foam. None of these methods helps increase the compression of the hatch packing or help reduce possible movement due to dynamic forces in a seaway. Therefore any subsequent movement of the cargo hatch covers will severely affect the additional protection afforded by these methods.

There are perhaps a few misconceptions surrounding the terminology and performance of hatch covers; “weathertight”, which is what hatch covers are normally designed to be, refers to a seal that will prevent water entry from one direction only, i.e. from the outside. This applies to dry cargo vessels. In the specific case of OBO carriers where alternate dry or liquid cargoes may be carried, a more substantial seal is required and a double sealing arrangement may be employed.

“Watertight” refers to a seal that will prevent leakage from both sides.

The traditional method of testing hatch covers for leakage is the “hose test” wherein a fire or washdown hose, ideally with a specified throughput and pressure, is directed at the sealing areas or any suspect areas of the hatch covers and a check made in the hold below for any leakage during the test.

Misaligned hatch cover panels.

This test will find obvious defects with the sealing arrangements but has several drawbacks.

Steel panel hatch covers when in the closed, sea-going position rely upon a specific minimum degree of compression of the rubber packing in the cover to maintain weathertightness.

The degree of compression is intended to maintain weathertightness in all sea conditions the vessel might encounter and accommodate all of the dynamic geometric changes imposed on the hatch opening by bending and "racking" (twisting) of the hull without losing the minimum compression of the seal needed to maintain integrity.

Hose testing during a survey in port may give a satisfactory result because the vessel is static and essentially, whatever the degree of compression of the rubber packing, it will not leak when tested in such a manner. However, this may very well not remain the case once more demanding weather conditions are encountered and the vessel's hull is flexing in a seaway.

Other drawbacks of hose testing include:

- Possible damage to cargo in the hold, if any.
- Cannot be carried out in sub-zero conditions.
- It requires deck scupper drains to be open to clear the deck of excess water.
- Possibility of contamination of the harbor water from deck debris.
- The test cannot accurately pinpoint potential leaks. Hose testing and other alternative methods such light and chalk tests are therefore not considered as a conclusive indicator that the hatch cover is indeed weather-tight.

As a result, the hatch cover manufacturers have developed an ultrasonic method of testing for use while in the static state (in port) which measures the actual degree of compression of the hatch cover packing by measuring the leakage of sound waves. This test requires a signal generator to be placed inside the cargo hold with the hatch cover closed. A sensor / receiver is then passed around all hatch seals and joints.

Essentially, if leakage exceeds 10% of the open hatch value (OHV) it is likely that the weathertightness of the hatch cover will be compromised in the dynamic conditions encountered in a seaway.

The main advantages of ultrasonic testing include:

- Can be completed by one man.
- Can be completed in any state of loading.
- Will not damage cargo.
- Can be completed in sub-zero conditions.
- This test will accurately pinpoint any potential leakage.

The ultrasonic method of testing is now the preferred method for all Members of the International Group P&I Clubs.

Investigating Human Error in the Marine Industry

Barry Strauch, Office of Marine Safety, National Transportation Safety Board, Washington, D.C.

"Perhaps he (master, pilot, chief engineer, etc.) just had a bad day, and that's why the ship (grounded, struck a pier, lost propulsion, etc.)." How often have you heard that as a suggested cause of an accident? Whether the accident in question involved a grounding, allision, collision, or other event that caused property damage, loss of revenue, injuries, or fatalities, the first instinct is often to fault the individual who caused the mishap, and the second is to attribute it to some temporary fault with him or her. After all, it is likely that we, or someone we know, was once in the same position as the poor fellow who caused the accident. There but for the grace of god, as the saying goes.

The National Transportation Safety Board looks at mishaps in all major transportation modes, and whether it is investigating an incident involving an airliner or a cruise vessel, its point of view is the same. Accidents do not happen because someone had a bad day. Accidents happen because something broke down in the safety system that allowed a person's error to become an accident. People will have bad days on occasion, but a well-designed system will prevent the results of a bad day from turning into an accident.

We can see this in the accident involving the Staten Island Ferry Andrew J. Barberi that allided with a maintenance pier in Staten Island, New York, on October 15, 2003. Eleven passengers were killed and 70 others injured in the event, many quite seriously. The cause of the accident was readily apparent within a day. About two minutes before the vessel was about to dock, the assistant captain, the person operating the ferry, for some inexplicable reason briefly lost awareness of what was going on around him. In those two minutes he failed to slow the ferry down at a buoy northwest of the terminal and turn it into the dock. Rather, the ferry continued at its cruising speed directly into the corner of a concrete maintenance pier. Certainly the assistant captain, who had an unblemished record up to that point, had a bad day. But is that what caused the accident?

Because anyone, at any time, can have a bad day and experience what the assistant captain did, organizations with the responsibility to ensure the safety of thousands of people, such as those who ride the Staten Island ferries, are obliged to establish a safety net that would stop such events, no matter how unlikely, from leading to a catastrophic accident. On the ferry, a second master mariner, the captain, was on the vessel during the accident sequence. Had he been in the pilothouse at the time he would have quickly noticed that the vessel neither turned nor slowed down at the proper point and would likely have taken control of the vessel before it would have struck the pier. Unfortunately, the captain was elsewhere on the vessel, most likely in the other pilothouse, where he was doing something other than monitoring the voyage. The New York City Department of Transportation, which operated the ferries, had a responsibility to ensure that both the captain and assistant captain were in the pilothouse whenever the vessel was moving. The investigation found that if there was such a policy it was not enforced. As a result, the real cause of the accident

was the lack of procedures and effective oversight by the people who ran the ferries, for failing to implement and oversee procedures that would have prevented the assistant captain's "bad day" from leading to an accident.

For investigators and mariners, among the lessons of the Andrew J. Barberi is this, because no one is perfect human error is inevitable. But systems that can affect the safety of large numbers of people, that is, all marine vessels, ports, docks, etc., need to be designed so that 1) the likelihood of someone making an error is reduced to the lowest extent possible, and 2) in the event that someone makes an error, the error will be caught before it can become an accident.

How can this be done? To operate safely marine systems, that is, people and machines working together to transport cargo and/or people from one location to another, depend on equipment that is designed to maximize human capabilities while minimizing exposure to human fallibilities. Then procedures that enhance mariner skills are developed to operate the equipment, with consistent oversight subsequently carried out to ensure that the procedures are followed or modified as necessary. Qualified people are hired to operate the system and they are properly trained and physiologically capable to do so. In short, every element of the system should be designed to enhance the abilities of the human operator to operate it effectively and reduce the likelihood that the operator will commit errors while doing so.

By design I mean not only comfortable surroundings and large, clear windows, important though they may be, but also components that do not present an excessive amount of information to the mariner. People, no matter how smart, can only respond to so much information at one time. Present too much information and some of it will be ignored. Alarms can help to focus someone's attention, but if too many alarms go off at one time, the person will not be able to distinguish among them and respond to the one that most needs attention. Further, alarms that continue to sound after alerting the mariner, to the point that they interfere with the person's ability to respond, will made matters worse. Thus, well designed equipment presents the right amount of information, when needed, so that the operator can make best use of the information. If things go wrong, alarms will alert the person to the problem, but do so in a way that the person can determine what set off the alarms, and how best to correct the situation.

How can procedures, which are necessary to ensure system safety, take advantage of human strengths while limiting exposure to shortcomings? Let us look at one example. It is well documented that people can stare at computer screens for only so long before they start to lose alertness. Designers of systems can create displays on computer screens that maximize the human operator's interest in what he or she is looking at, but after a while the person's ability to obtain information from the screen will still be reduced. Limiting the time that a person stares at a screen, as is done for air traffic controllers or airport security screeners, is one way to accomplish this. Of course, procedures need to be enforced to ensure that they are followed. Oversight accomplishes this. In the Andrew J. Barberi the procedures, the oversight, or both, were insufficient. And as a result, the captain, the person who could have prevented the accident, was not in a position to do so.

Oversight does not mean that a company sends out ogres to compel compliance with every written rule. Rather, effective oversight depends on a process by which a company maintains awareness of how its equipment is being operated. As important, oversight should also create an environment, or "culture," in which employees want to operate safely. Some companies have done this by establishing voluntary reporting programs that encourage employees to report lessons learned that can be shared with others.

Further, safety conscious companies create policies that recognize that they can influence operators having "good" or "bad" days. For example, numerous factors have been shown to adversely affect human performance. These include fatigue and drug use. Companies can establish work schedules that enhance rather than detract from operator performance. Schedules that call for people to work during the day one week, for example, and at night the next, create conditions that lead to operator sleep loss, and hence to an increased likelihood of errors. Similarly, companies that require operators to work when sick increase the odds that its operators will be working while taking prescribed drugs, many of which interfere with alertness and hence, increase the likelihood that errors will be committed.

Interestingly, companies can also, inadvertently, create environments where employees try too hard to adhere to their policies to the point that safety is threatened. On April 25, 2005, 107 people were killed when a West Japan Railway Company commuter train derailed just before the Amagasaki Rail

station, outside of Osaka. Reports after the accident indicated that the train operator, whose train was about 90 seconds behind schedule, was operating the train at an excessive speed in an attempt to get back on schedule. The train jumped a curve, derailed, and struck an apartment building. The operator was among those who were fatally injured.

Accident investigators understand that individuals can have "bad days" and thus, be more likely to commit errors than they otherwise would. The West Japan Railway train operator certainly did. But skilled investigators will go beyond that to determine what allowed the person's bad day to lead to an accident. For example, investigators certainly looked at how strictly the company enforced its train schedule and the likely consequences the train operator would have faced for bringing his train in late. Excessive punishment, effective though it may appear to be to ensure compliance with company policies, will have unintended consequences that undermine rather than support the intent of those policies.

Investigations into human error, in sum, will look beyond a "bad day" to understand the context in which errors were made and the conditions that allowed them to lead to an accident. When deficiencies in the system that allowed the error to lead to an accident are uncovered, they are identified and methods to correct them suggested. I know of no one who has not had a bad day or who has not made a foolish error. But safe organizations understand this and establish the means to prevent these bad days from causing accidents. It is the job of investigators to identify how this can be done to prevent the next bad day from creating the accident that is the lead story on the evening news.

FD&D CORNER

By George J. Tsimis, Esq., Managing Director, Shipowners Claims Bureau (HELLAS), Inc.

"Cargo Indemnity Claims Under ICA Not Ripe Enough for Rule B"

In a recent SDNY decision involving one of our Members, *Sonito Shipping Co. Ltd. v. Sun United Maritime Ltd.*, (S.D.N.Y. Mar. 16, 2007) 2006 Civ. 15308 (CSH), Judge Haight held that a cargo claim against a charterer for indemnity due to improper stowage or mishandling by stevedores was not ripe enough for the vessel owner to obtain security from the charterer by way of a Rule B attachment. This case is the latest of several decisions addressing this particular issue and is especially relevant for Members and P&I Clubs alike seeking to recover contributions from a charterer or sub-charterer for its fair share of a cargo loss. In the case, the vessel owner had posted security through its P&I Club to avoid an arrest of its vessel by cargo receivers who alleged a shortage claim totaling US$260,000. The charter party had incorporated the 1996 version of the Inter-Club Agreement (ICA) which contains an apportionment of liability between the charterer and the owner for cargo claims. Judge Haight applied English law and held that a cargo indemnity claim only accrues after the settlement has been made by the vessel owner. Because no settlement had been made yet (a Club LOU has been issued to secure the cargo claim brought by receivers), Judge Haight concluded that the vessel owner had not satisfied the first prong of Rule B's requirement, namely, to assert a valid prima facie admiralty claim. Notably, the Court rejected the argument that the vessel owner could seek security on the basis of an independent contractual claim under the charter party for the breach of the charterer's obligation to properly load, stow and/or discharge the cargo under Clause 8 of the NYPE form. The obvious corollary to this holding is that a vessel owner would be able to assert a breach of charter claim if the underlying charter party does not incorporate the ICA.

We are critical of this ruling because we believe that it will only encourage charterers to avoid known liabilities or to refrain from securing such claims which clearly fall within their responsibility. It may also encourage vessel owners to settle their cargo claims more swiftly and at higher levels so as to avoid the prospect of being unable to collect either in full or in part from their charterers under the ICA. In light of this recent ruling, and to avoid the result reached in *Sonito Shipping*, we would recommend that in future charter parties our Members should include an additional sentence in any Rider Clause that incorporates the ICA to provide as follows: "It is expressly agreed by owner and charterer that, despite the inclusion of the ICA into this charter party, the vessel owner may seek security from the charterer at any time after the assertion of a cargo claim by receivers and prior to the settlement of any such cargo claim by the vessel owner with such cargo interests."

"Liberty Clauses: Are They Frustration Free?"

In another recent decision involving one of our Members, the London High Court issued a noteworthy decision on the interpretation of liberty clauses in charter parties. In *Select Commodities Ltd. v. Valdo S.A. ("The FLORIDA")* [2006] EWHC 1137 (Comm), the parties had entered into a voyage charter to carry a shipment of vegetable oil from Indonesia to Lagos, Nigeria. Before any cargo had been loaded, the charterer advised the vessel owner that it had to cancel the fixture because the Nigerian authorities were not allowing vessels to discharge cargoes of vegoil. Later that week, the charterer sent a copy of a letter from the Nigerian ministry of finance which confirmed the government's policy of banning the importation of vegetable oils. The charterer contended that the venture had been frustrated. The vessel owner rejected the charterer's contention and argued that the event fell within the scope of the Liberty Clause contained in Clause 29 of the Vegoilvoy standard form. More specifically, the Liberty Clause provided that in such circumstances the owner could before loading or before the commencement of the voyage require the shipper to take delivery and, failing that, warehouse the cargo at cargo's expense, or alternatively discharge the cargo elsewhere at the risk and expense of the cargo. The vessel owner thereafter sought damages for the eight day delay incurred at the loadport and for fixing the vessel with another charterer at a substantial loss.

Sitting as sole arbitrator, Mr. Baker Michael Harber concluded that the existence of the Liberty Clause precluded the charterer's claim of frustration due to the importation ban. Mr. Baker Harber added that the Liberty Clause had provided for precisely this type of situation where no cargo had been loaded yet. Consequently, the Tribunal awarded the vessel owner damages which ultimately were in the region of US$400,000. On appeal, however, Mr. Justice Tomlinson disagreed and set aside the Award. Mr. Justice Tomlinson found that Clause 29 did not make a full and complete provision for the eventuality of an importation ban before the loading of the vegoil cargo. More specifically, Mr. Justice Tomlinson held that the Liberty Clause presupposed that there was actually a cargo already on board and because the case at hand involved a situation before the cargo had ever been brought forward for loading onto the vessel, it was inapplicable. As a result, the charterer was allowed to rely on the doctrine of frustration.

Upon further reflection and review of the arbitration award, we were disappointed that the Court reversed Mr. Baker Harber's decision, not only because he had ruled in favor of our Member, but also because we felt that he had appropriately addressed all of the contingencies contemplated by the Liberty Clause. Nevertheless, the caveat following this decision is that a liberty clause will only preclude a frustration argument if it is sufficiently worded to fully and completely deal with the alleged frustrating event.

"Rolling the Dice: The Risks That Go with Late Redelivery"

Late redelivery claims are common and with the current strong market, even the slightest of late redeliveries can result in substantial monetary damages. In *Transfield Shipping Inc. v. Mercator Shipping Inc. (The "ACHILLEAS")* [2006] EWHC3030, the charterer, Transfield, had extended an existing time charter and agreed to a maximum duration expiring on May 2, 2004. On April 21, 2004, the vessel owner fixed a period charter with Cargill for approximately 6 months at a rate of US$39,500 per day. On April 23, 2004, Transfield gave a seven-day notice of redelivery between April 30th and May 2nd. Transfield then sub-chartered the vessel to perform one last short voyage. However, the vessel was delayed and ultimately not redelivered until May 11, 2004, approximately 9 days after the May 2, 2004 deadline. The vessel owner lost its laycan date and Cargill used the situation to renegotiate the charter rate down by $8,000 per day or a daily hire rate of US$31,500. The Cargill charter then lasted for 191 days. The vessel owner argued that it should be awarded damages in the amount of US$1,364,584.37, which represented the difference between the rate originally fixed with Cargill and the revised rate of $31,500 (e.g., 191 times $8,000). The charterer instead argued that the damages should be calculated by applying the difference between the market rate of hire versus the actual hire rate with Cargill during the nine-day period of late redelivery. The London arbitration tribunal awarded the vessel owner's requested damages of US$1,364,584.37 and the charterer appealed. The London High Court of Justice dismissed the appeal and held that the owner's claims were not too remote and that charterer's requested damages regime would result in compensating the vessel owner for only a fraction of its actual losses. In short, the Court emphasized that Transfield knew its late redelivery of the vessel might result in the loss of the vessel's next fixture, that market fluctuations were known and common at that time, and that the kind of loss suffered by the vessel owner – to wit, a renegotiation downwards of its fixture with Cargill was clearly foreseeable. So the lesson to be

learned here if you are a charterer is to make sure that if you are trying to squeeze in one last voyage, it is din so at its own peril.

"Letting It Ride: Calculating Damages When a Long-Term Charter is Repudiated"

In a decision handed down only a month ago, the House of Lords in *Golden Strait Corporation v. Nippon Yusen Kubishika Kaisha (The "GOLDEN VICTORY")* [2007] UKHL 12, issued a key decision concerning the manner in which damages are to be calculated in the context of a repudiation of a long-term time charter. In 1998, the vessel had been time chartered for a period of seven years and three years into the fixture, the charterer redelivered the vessel and essentially repudiated the charter. The charter party contained a War Clause which provided a basis for cancellation if war were to break out between certain countries, including the U.S., U.K. and Iraq. In March 2003, hostilities indeed broke out between these aforementioned countries. Owners claimed that they were entitled to recover damages for the full period of four years, or the damages assessable on the date of the repudiation. Charterer contended that the damages should be calculated only up until March 2003 (when the war in Iraq had commenced), and that the finder of fact should take note of events that occurred after the repudiation and before the Court's assessment of damages. Essentially, the dispute turned upon the timing at which the damages assessment is to be made.

The House of Lords found in favor of the charterer and concluded that the breach date rule should not to be followed in this case. Instead, the House of Lords reasoned that when assessing damages in the context of a repudiation of a long-term time charter, consideration will be given to events which take place after the breach. The war in Iraq had already been in existence when the dispute was being decided in arbitration and, consequently, the House of Lords believed that the arbitrator had been correct in taking this event into account when assessing the vessel owner's damages.

While this decision sheds some light on how courts will approach the assessment of damages in such repudiation cases, it also creates some additional questions. For instance, It would basically be impossible to ascertain an exact damages figure until either the finder of fact issued its award or decision, or the remaining period of the long-term time charter expired.

"Is It Safe? Claiming Unsafe Port When Other Vessels Ground"

Independent Petroleum Inc. v. Seacarriers Count Pte Ltd. (The "COUNT") [2006] EWHC 3173 was not your typical run-of-the-mill unsafe port case. Here, the vessel owner sought damages caused by the delays caused by others vessel that had grounded at the port of Beira, Mozambique. Specifically, when the vessel was berthed, another vessel grounded in the channel, and again while the COUNT was alongside, a second vessel grounded in the channel. The second grounding blocked the channel and prevented the COUNT from departing by about five days. The vessel owner claimed approximately $63,000 in damages from the charterer for allegedly breaching the safe port provisions found in the Asbatankvoy form charter. In the London arbitration proceeding, the tribunal concluded that the port was indeed unsafe and referred to certain key facts. First, the tribunal noted that the buoys in the access channel at Beira were incorrectly positioned and that there was no adequate system at Beira to monitor the positions of the buoys, despite the frequent shifting of sand banks in the channel. The charterer appealed the Award and the High Court, in a brief decision by, Mr. Justice Toulson, rejected the charterer's arguments and affirmed the Tribunal's conclusions. This case is noteworthy because it is a good example of how a claim for unsafe port can be successfully asserted even though the claiming vessel has not suffered any physical damage at the port in question. For all you Lawrence Olivier fans, please pass the clove oil.

"It's Tool Time Again: Fine Tune Your Charter Party"

Despite the strong market that has prevailed during recent years, we are still noticing that many Members continue to include certain provisions in their charter parties which not only unnecessarily increase the Member's potential liability, but which also potentially prejudices its P&I Cover. A few examples of such high risk terms include the following.

First and foremost, we have noticed that many of our Members continue to amend Clause 8 of the pre-printed NYPE form time charter agreement by adding the words "and responsibility", even in situations involving a time charter trip to a West African or other high risk jurisdiction. Such jurisdictions are notorious for stevedore mishandling and looting claims, as well as phantom shortage claims. The net result of such an amendment is the inability of the Member to pass off the liability and responsibility for such cargo claims to the vessel's charterer, who should normally be responsible for any risks or damages caused during discharge operations. More importantly, such an amendment to Clause 8 can drastically alter the liability apportionment regime set forth in the Inter-Club Agreement. Considering the charter and freight rates that have been achieved during the past few years, it would seem that vessel owners presently have a stronger bargaining position during fixture negotiations to make sure that an amended Clause 8 does not find its way into our Member's fixtures. It is the Managers' recommendation therefore that Clause 8 should not be amended, especially when the vessel is fixed to discharge its cargo in a place that is notorious for its mishandling.

Members should also refrain from including a Rider Clause which provides for the automatic acceptance of a Letter of Indemnity (LOI) from charterer for the non-production of original bills of lading. If a cargo claim arises in the aftermath of a vessel owner's acceptance of such a charterer's LOI, the Managers would be unable to exercise their discretion and cover such a claim. Instead, according to the Association's cargo P&I Rules, only the Association's Board of Directors would be able to exercise discretion to cover such a claim. See Class, Rule 2, Section 7(c)(ii) (addressing claims payable only at the discretion of the Directors). Such a result would take a standard cargo claim away from the normal channels of handling by the Managers and instead make a garden variety cargo claim become more akin to an Omnibus Clause claim, which we all know implies special and unusual circumstances to warrant coverage.

Finally, please be wary of any Rider Clauses which give the charterer the right to issue bills of lading on behalf of the Master. The risk that the Member runs in such situations is that the charterer might issue a clean bill of lading when the circumstances do no warrant it, to wit, when the Mate's Receipts contain several remarks concerning the quantity, quality or condition of the cargo that would otherwise protect the vessel owner from a potential cargo claim at outturn. Again, such a scenario would potentially prejudice a Member's P&I cover insofar as it would likely violate the Association's cargo P&I Rule concerning incorrect cargo descriptions in bills of lading, and it would necessitate referral to the Association's Board of Directors. See Class, Rule 2, Section 7(c)(iv).

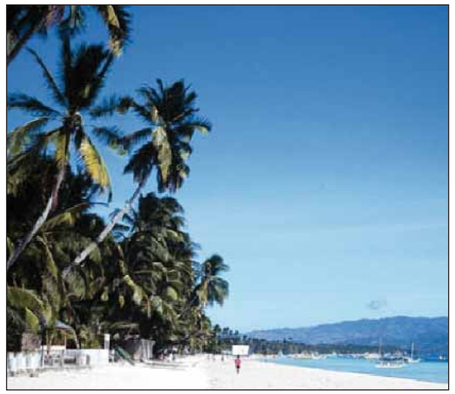
For any additional advice concerning charter party clauses, please do not hesitate to contact the Managers' FD&D Department.

Pandiman Philippines, Inc, P&I Correspondents in the Philippines

The Philippines is a widely flung archipelago of seven and a half thousand islands sitting at the Eastern edge of Asia, the South China Sea to the West and the vast expanses of the Pacific Ocean to the East. It is a rugged landscape, most of the islands created through volcanic activity, slopes cloaked in dense rainforests, shores lined with mangroves and coral reefs. Having risen out of the sea most of the Philippine islands have never been in contact with mainland Asia and as a result have developed their own unique fauna and flora.

Captain Andy Malpass, President of Pandiman Philippines, Inc. was at sea for 20 years, in the British Merchant Navy, from Deck cadet to Master on board 80,000 cbm LPG tankers, before joining Pandiman Philippines in 1997.

Pandiman Philippines, Inc. was formed in 1982 by our late President and founder F.J.D. Clemo MBE who had been in shipping related business in the Philippines since 1950. Pandiman was born out of



Aquila maritime which was formed in 1973 and as early as1978 the company was handling personal injury cases. Today they have a staff of 65 and assist P&I Clubs and ship owners in all aspects of P&I claims with fully supported crew and cargo divisions. Our office is located in Intramuros (The old walled city) an area of Manila that dates back to the 15th Century and is located near the Harbour.

For the majority of people in their daily life at home, traveling to their office and going to the shopping malls, it never occurs to them that all the materials to build them the cars they drive and their everyday needs have probably been transported by ships, manned by Filipino officers and crew. There are over 700,000 registered Filipino seafarers with up to 250,000 deployed at any one time manning 25 % of the world's tonnage. It is not surprising, then, that the bulk of our work involves crew claims.

All Filipino seafarers are required by law to be deployed on board Ocean Going vessels under the Philippines Overseas Employment Administration (POEA) contract; this is the bench mark and the owner's minimum obligation under law. Owners for several reasons will engage crew with superior conditions and benefits, covered by an overriding collective bargaining agreement (CBA). This can be through a desire to promote loyalty to retain good crews or due to pressure by unions representing the seamen on the trading pattern of the vessel. However no CBA can be inferior to the POEA and the law is that which ever contract is more beneficial to the seafarer will be applied. The POEA contract since 2000 has attempted to delineate between work and non-work related issues but currently falls short of clearly defining what is work related.

The contract includes Section 32A, this table of occupational diseases has long been a contention of the undersigned, as it barely relates to the maritime environment and in many instances is out of date. It is a copy of the land based Employees Compensation Commission (ECC) occupational disease table which was ratified in 1977 and was adopted into the POEA contract word for word except that "employee" was replaced with "seafarer'. It is therefore with interest that it was noted recently that the government is to de-list many ailments especially those brought on by lifestyle rather than working conditions, items such as hypertension, and cardiovascular. The table being included in the POEA contract has certainly created more alleged legal cases and it would be prudent for the POEA to note these changes, as initial discussions are to be addressed on revision of the contract within the year.

One other area of concern has been the issue of "120 days", this has been one affecting the whole industry and refers to the decisions on initially the

Crystal Shipping case (involving seafarer Natividad) and then the Remigio case. This is where the Supreme Court ruled that under the labour code of the Philippines a disability should be assessed after 120 days. However the POEA contract is very specific and the 120 days relates to sick wages only, the owners obligation in regards to disability is until a seafarer reaches maximum medical cure or is fit to work.

A Motion for Clarification was filed to seek the Supreme Court's position and provide the opportunity to respectfully discuss that the provision of the POEA contract is separate and distinct from that provided under the Labour Code of the Philippines. With the second case decided the industry filed an intervention, a Special First Division at the Supreme Court was created to review the 120 Day situation, the concerns and arguments put forward by the Maritime industry. In particular the interpretation of the POEA contract in relation to the law under the Labour Code.

The Supreme Court ruled early this year and upheld that the medical condition of the seafarer was one of total disability and that the monetary figure stands. However the Supreme Court clarified that disability should be based on medical assessment not the number of days and the POEA contract is separate and distinct from the Labour Code. As the Crystal case was settled through a compromise agreement and not now an active case, the clarification of the Supreme Court has not yet become law, but does open the way for a full reversal and new ruling/law on the Remigio case.

There are no maritime courts in the Philippines and given the challenges of the Philippine legal system and in particular the Labour Court the National Labour Relations Commission, Pandiman Philippines, Inc. is here to support owners and clubs fully. From medical management through all aspects of crew

claims, a challenge they enjoy. They also provide medical escort facilities through our sister company Aeromed where Filipino doctors fly to assist in repatriation of injured/ill seafarers. Additionally in regards to cargo related incidents they have a ship survey arm under Survey Specialists Inc.

American Club hosts seminar and symposium in Piraeus

George Tsimis, Managing Director of SCB (Hellas), Inc.

On April 18, 2007, the American Club held a seminar and symposium to be held in 6 years at the Marine Club in Piraeus, Greece. This seminar is the first seminar to be held in Greece and is intended to become an annual event, probably for regular scheduling, during the month of April.

The seminar opened with an introduction by George Tsimis, Esq., Managing Director of the SCB (Hellas), Inc. He was followed by Joe Hughes, Chairman and CEO of SCB, Inc. who provided a status report the Club's somewhat buoyant circumstances after the 2007 renewal.

Mike Mitchell, Senior Vice President of Claims and General Counsel for SCB, Inc. followed thereafter, providing Members with an update on recent developments in pollution law for the United States and, in particular, issues related to oily water discharges.

Victoria Liouta, Claims Executive, SCB (Hellas), Inc. and George Tsimis

Victoria Liouta, Claims Executive for SCB (Hellas) Inc. made a presentation particularly relevant to local operators on death, illness and injury compensation under Greek law pertaining to domestic and foreign seafarers alike.

Dorothea Ioannou, Claims Executive for SCB (Hellas), Inc. then discussed the permutations of liability in this respect contained in various forms of the Running Down Clause and the interplay between P&I and Hull & Machinery insurances.

Thereafter, George Tsimis, provided a review of recent developments in regards to Rule B attachments in the United States. Dr William Moore, Vice President of Loss Prevention, Risk Control and Survey Compliance, then gave an update on the Club's Pre-Employment Medical Examination (PEME) Program (see more on this subject in this issue of CURRENTS).

Anna Quinn, Vice President and Claims Adjuster for SCB, Inc. in New York walked the audience through the difficult problems of handling spurious claims in

Andreas Maroulletis, Claims Executive, SCB (Hellas), Inc.

Yemen. Mr. Andreas Maroulletis, Claims Executive, SCB (Hellas), Inc. wrapped up the claims-related presentations with a summary of the Club's activities and strategies on anti-suit injunctions, and, its recent West Africa experiences.

Closing remarks were made by Mr. Vince Solarino, President and COO of SCB, Inc. who presented a picture of the Club's finance and the strategy being developed to establish a financially strong American Club in the coming years.

This event will become an annual seminar in Greece for local and regional Members. The presentations can be found on the American Club website at www.american-club.com.

AMERICAN CLUB FLEET 2007