CURRENTS

Issue Number 27 • November 2008

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MANAGEMENT CHANGES

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

NEW YORK	**PAUL BARNES**	Vice President, Underwriting
LONDON	**CHRIS LOWE**	Marketing Assistant
PIRAEUS	**KONSTANTINOS KORAIS**	Administration

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INTRODUCTION

by: Joseph E.M. Hughes
Chairman & CEO
Shipowners Claims Bureau, Inc.

To borrow from Jane Austen, it is a truth universally acknowledged that the longer the time spent in this business, the faster the P&I years fly by!

That is how it looks from here. By the time this edition of *CURRENTS* reaches our Members and other friends, the American Club will be preparing for the 2009 renewal season. It seems only a short time ago that this column contained comments about the then most recent renewal, and how the underlying tempo and instincts of the season had little changed over the years.

In the meantime, the current policy year is more than halfway through! From the Club's perspective, matters have been proceeding relatively well. The incidence of claims appears to be holding to a pattern at least as good as that in the previous year. There were three relatively major incidents in the first few months which affected the mid-to-upper layers of the Club's own retention. However, International Group Pool exposures have been subdued, certainly by comparison with 2006 (a record year for Pool claims) and last year at the same stage.

In the ordinary way, this would augur well for the future! But even such muted optimism might be excessive in the current climate, given the uncertainties which beset the business environment.

The unprecedented distress of the capital markets over the past few months is a source of concern to everyone. It will be interesting to see how current circumstances play out over the forthcoming period. Two things, however, are certain: first, that the world of high finance will never be the same again and, second, that reliance upon investment returns to subsidize underwriting losses will perforce become a strategy of the past.

Having undergone two years of portfolio refinement as a means of improving technical results, the American Club welcomes what lies ahead. As a modern mutual with a global reach, it sees itself as a Members' club dedicated to the partnership principle, welcoming the future with a commitment to excellence.

As such, the Club is taking steps to re-engage itself with its Members and the market with a message reiterating its mission:

- Reliable insurance at a sensible cost
- Respectable Club size and spread of risk
- Sound operating results based on healthy underwriting performance
- Unrivaled levels of service in customer care
- Respectable financial ratings
- Solid commitment to the International Group
- Extensive use of technology in every dimension of Club activity
- Maintenance of strong business culture and relationships

Many of you will already have heard this message from members of the Club's management team by the time you see this latest edition of *CURRENTS*. It is intended to provide a platform for the success to which the American Club looks forward with its characteristic vigor and optimism!

PERMANENT DISABILITY FOR PHILIPPINES SEAFARERS EXTENDED TO 240 DAYS

by: Ruben del Rosario
Del Rosario and Del Rosario
Manila, Philippines

The Philippine Labor Code states that a disability lasting continuously for more than 120 days should be considered "total and permanent disability." In the Crystal Shipping (October 2005) and Remigio (April 2006) cases, the Philippine Supreme Court ruled that seafarers are subject to the Labor Code concept of permanent disability. Hence, in both cases seafarers who were unable to perform their customary work for more than 120 days were awarded the maximum compensation for permanent disability of USD 60,000.

However, shipowner interests argued that the Labor Code "120 day rule" should not apply to seafarers' claims, which are governed by the POEA Standard Employment Contract in that the Labor Code principle is different from the POEA disability concept in many respects.

In February 2007, the Supreme Court issued a resolution which clarified that the degree of disability in Filipino seafarer claims should be measured by medical assessment based on the POEA schedule, rather than by number of days of incapacity.

Nevertheless, said clarificatory ruling had not been fairly applied by the Supreme Court and the National Labor Relations Commission (NLRC), the principal forum for resolving seafarers' claims. As a result, the issue was not laid to rest and Owners were at risk of unfavourable rulings that the USD 60,000 maximum compensation (or higher in most CBAs) was payable even where there was expert medical advice that the seafarer was not permanently disabled. The manning industry pinned their hopes on the Remigio case where various manning organizations joined forces to formally intervene to stress the importance of the matter to the industry and have the Court fully address the issue. In July 2008, the Supreme Court denied the industry's reconsideration plea with finality.

The issue took a refreshing twist when the Supreme Court revisited the issue in the fairly recent case of Jesus Vergara vs. Hammonia Maritime Services (6 October 2008). This time, the Court was more in depth in clarifying the Crystal Shipping when it held that "this declaration of permanent total disability after the initial 120 days of temporary total disability cannot, however, be simply lifted and applied as a general rule for all cases in all contexts." The Court reconciled the pertinent provisions of the Labor Code with the POEA standard contract in the following manner:

1. Upon sign-off from the vessel for medical treatment, the seafarer must report to the company designated physician within three (3) days from arrival for diagnosis and treatment.
2. For the duration of the treatment, but in no case to exceed 120 days, the seaman is on temporary disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws.
3. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seafarer may of course also be declared fit to work at any time such declaration is justified by his medical condition.

It appears that the Court has extended up to 240 days the determination of the seafarer's degree of disability or fitness depending on the prevailing medical circumstances. We are hopeful that going forward, the Courts will consistently apply this new principle in the interest of proper handling of disability and medical claims involving Filipino seafarers.

Joseph Hughes presents the American Club to the market in Hong Kong.

THE AMERICAN CLUB HITS THE ROAD!

In a series of presentations entitled **BUILDING ON THE PAST, WELCOMING THE FUTURE,** members of the management team have recently been promoting the American Club's message to the maritime community in various locations around the globe.

The presentation highlights the great change which has taken place in recent years, the Club's current status as a modern mutual with a global reach and, looking to the future, how it aims to add value to its Members' business activity in the challenging economic times which lie ahead. In conclusion, there is a review of the Club's recent financial and other quantitative performance, emphasizing the great progress which has been made over the last decade.

The series began in New York and Seattle in mid-September, with presentations having later taken place in Singapore, Hong Kong, Shanghai and Athens. Further events are scheduled for Istanbul in conjunction with the Club's Board meeting there in mid-November, and shortly thereafter in Mumbai. The series will conclude in London in mid-December on the occasion of the Club's traditional pre-Christmas reception at Trinity House.

PEME PROGRAM EXTENDS TO INDIA AND INDONESIA

by: Dr. William H. Moore
Senior Vice President
Shipowners Claims Bureau, Inc. New York

The Club has recently extended the PEME program to include seafarers from India and Indonesia. The PEME program is currently mandatory for seafarers originating from Latvia, Poland, Romania, Russia, Ukraine and the Philippines. Furthermore, on February 20, 2009, it will thereafter be mandatory for Members to utilize these approved clinics for Indian and Indonesian seafarers.

Also in 2008, the Club's program has actively expanded its provision of services to port cities around the world to accommodate shipowner's PEME compliance requirements for seafarers actively working at sea. Members have the option to arrange for seafarer's PEMEs at 54 clinics spread throughout 15 countries.

The program was initiated in March 2004 in the Philippines and Ukraine to control claims incidence and costs from pre-existing conditions and has been successful in reducing the frequency and costs of illness claims on the order of US$9 million over that time period.

A full list of approved clinics can be found in the *Loss Prevention* section of the Club's website at **www.american-club.com**.

CAVEAT AKTOR—THE LOST DEPOSIT

by: Lewis Moore
Swinnerton Moore LLP
London, United Kingdom

You would probably think that if you were buying a ship and you are ready to release the 10% deposit held in the sellers' designated bank and pay 90% to the Bank nominated by the sellers you would be home and dry. The purchasers of the CAVEAT AKTOR probably thought this too—but they were wrong.

The result of the case is that the sellers lost their deposit. How did this come about?

The vessel was sold on a NSF 93 Form and the recap provided for a 10% deposit to be lodged in Singapore and the balance of 90% to be paid on delivery at sellers' nominated bank. It also said the place for closing/exchange of documents was to be Singapore.

The MOA which was subsequently drawn up and signed by the parties again provided for the 10% deposit to be paid to the nominated bank in Singapore but said that the purchase price would be paid to Sellers' nominated bank on delivery of the vessel. It still provided for place of closing/exchange of documents to be in Singapore. It contained the standard clause 13 which said that if the purchase price was not paid the deposit with interest should be released to the sellers.

The sellers nominated HSBC Singapore for payment of the 10% deposit and NBG Piraeus for payment of the balance.

A dispute then arose because the sellers said they wanted the 100 percent paid in Piraeus at the closing. The buyers said they would pay the 90% in Piraeus and release the deposit. The sellers then gave the buyers an ultimatum that they must produce in Piraeus a letter from HSBC Piraeus confirming a same-day value remittance to NBG or a banker's draft in favour of NBG for the 10% by 10:00 a.m. Greek time the next day, otherwise the contract would be voided at that time. The buyers did not agree and the sellers brought the contract to an end and forfeited the deposit. The arbitrators held that they were entitled to do so.

The matter was appealed to the High Court and the buyers lost on the appeal. The findings were, in summary:

- The purchase monies, i.e. 100%, were to be paid to the sellers' nominated bank which was in Piraeus. Delivery of documents and payment did not necessarily have to be at the same place;
- The buyers could not obtain rectification of the MOA to make it correspond with the recap because, as a finding of fact, the arbitrators had held that the MOA could not be rectified. As a finding of fact, this was not, therefore, appealable;
- The arbitrators were correct when they did not find that in the light of the recap the 10% was to be paid by release of the deposit in Singapore;
- Payment in Greece was a condition of the contract.

COMMENTS

This seems to be a case where rectification should have been allowed. The scheme of the recap specifically provided for the 10% to be deposited in Singapore and the balance of 90% only to be paid on day of delivery at sellers' nominated bank. If that scheme had been adopted the buyers should have succeeded.

Alternatively, given that the sellers had nominated the Bank at Singapore for holding the deposit under the MOA then this should have been interpreted as a "nominated bank" for the purpose of payment, i.e. that effectively, sellers had "nominated" two banks.

Not so long ago bankers would attend the closings with a banker's payment letter confirming that the funds were being transferred for value that day to the sellers' account. The report does not say whether or not this procedure was suggested or available.

Lodging of the 10% deposit under MOAs in a joint account in sellers' and buyers' name has become more problematical as the war against money laundering increases its pace. For this reason, deposits may often be established with banks in different jurisdictions from those where the final payment is to be made. Buyers should be particularly careful to ensure that they are not caught in a similar trap especially if the sellers' bank is in an earlier time zone than the bank where the deposit is held. Given that Singapore is ahead of Greece, it should have been possible for this matter to have been resolved had there been goodwill and cooperation.

In the meantime buyers should be most cautious about ensuring that the MOA terms reflect the agreed payment procedure and that they can comply with it.

IMO UPDATE HIGHLIGHTS

ON SAFETY, ENVIRONMENT AND SECURITY

by: Dr. William Moore
Senior Vice President
Shipowners Claims Bureau, Inc. New York

SAFETY

PREVENTION OF ACCIDENTS INVOLVING LIFEBOATS

Effective July 1, 2008, an amendment was made to SOLAS regulation III/19.3.3.4 on provisions for the launch of free-fall lifeboats during abandon-ship drills. During abandon-ship drills, the lifeboat can be free-fall launched with only the required operating crew on board, or lowered into the water by means of the secondary means of launching without the operating crew on board, and then maneuvered in the water by the operating crew. The aim is to prevent accidents with lifeboats occurring during abandon-ship drills.

ENVIRONMENT

ANNEX IV OF MARPOL 73/78 ENTERS INTO FORCE FOR EXISTING SHIPS

On September 27, 2008, Annex IV of MARPOL 73/78, Prevention of Pollution by Sewage from Ships, entered into force for existing ships bringing extensive requirements for the handling of shipboard sewage.

The annex requires ships to be equipped with either:

- a sewage treatment plant;
- a sewage comminuting and disinfecting system; or
- a sewage holding tank.

The discharge of raw sewage into the sea can create health hazards. In coastal sea areas, it can also lead to a depletion of oxygen in the water and visual pollution—a particular problem for countries with large tourist industries. Under current thinking it is assumed that the oceans are capable of assimilating and dealing with raw sewage through natural bacterial action.

Thus, the discharge of sewage into the sea is prohibited at and within a 12 nautical miles from the nearest land. However, exceptions apply when the ship has an approved sewage treatment plant in operation or when discharging comminuted and disinfected sewage using an approved system at a distance of more than three nautical miles from the nearest land.

When a flag-State requires ships under its jurisdiction, i.e. ships under its flag, and other ships operating in its waters, to comply with the discharge requirements, then it shall ensure adequate facilities at ports and terminals for the reception of sewage are provided.

The revised MARPOL Annex IV apply to new and existing ships of 400 gross tonnage and above or ships which are certified to carry more than 15 persons and engaged in international voyages.

U.N. SECURITY COUNCIL ACTS ON PIRACY

On June 2, 2008, United Nations (UN) Security Council (SC) adopted a resolution authorizing a series of decisive measures to combat acts of piracy and armed robbery against vessels off the coast of Somalia. Firm action has been needed since the current situation was stifling the flow of much-needed aid to the people of Somalia, jeopardizing the lives of innocent seafarers, fishers and passengers, and adversely affecting international trade.

Under the terms of resolution 1816 (2008), countries cooperating with Somalia's Transitional Federal Government (TFG) would be allowed, for a period of six months, to enter the country's territorial waters and use "all necessary means" to repress acts of piracy and armed robbery at sea, in a manner consistent with relevant provisions of international law.

The UN SC text was adopted with the consent of Somalia, which itself lacks the capacity to interdict pirates or patrol and secure its territorial waters. It follows a surge in attacks on ships in the waters off the country's coast, including highjackings of vessels operated by the World Food Programme (WFP) and other commercial vessels—all of which posed a threat "to the prompt, safe and effective delivery of food aid and other humanitarian assistance to the people of Somalia," and a grave danger to vessels, crews, passengers and cargo.

Affirming that the authorization provided in the resolution applies only to the situation in Somalia and shall not affect the rights and obligations under the United Nations Convention on the Law of the Sea (UNCLOS), nor be considered as establishing customary international law, the SC also requested cooperating countries to ensure that anti-piracy actions they undertake do not deny or impair the right of innocent passage to the ships of any third country.

While urging countries with naval vessels and military aircraft operating on the high seas and airspace adjacent to the coast of Somalia to be vigilant, the SC encouraged countries interested in the use of commercial routes off the coast of Somalia to increase and coordinate their efforts to deter attacks upon and hijacking of vessels, in cooperation with the country's Government.

Furthermore, on October 7, 2008, the UN SC asked all nations to "take part actively" in the fight against piracy off the coast of Somalia. The SC voted unanimously to adopt a new resolution 1838 which seeks deployment to the area of naval vessels and military aircraft to use "the necessary means, in conformity with international law" to engage pirates.

In addition, the EU is intending to start a system of military-led convoys; the Brussels based piracy cell will inform ships via national shipowner associations of the position and departure times for the convoys.

However, it was also clear that some ships continue to leave themselves vulnerable to attack through a failure to observe the most basic of passive defensive measures. Allegedly, recent incidents have included a failure to mount a stern lookout and, in one reported case, even leaving a ladder over the ship's side. Use of speed and aggressive evasive steering has proved effective on several occasions.

Good basic guidance is available in Maritime Safety Committee (MSC) Circular 623 and of course in the International Chamber of Shipping Piracy Guide. It is essential that a reminder of this guidance is quickly passed to all ships likely to transit areas at risk from attack by pirates and armed criminals.

A copy of MSC Circular 623 can be found at the IMO website at www.imo.org or directly through the following web address: http://www.imo.org/includes/blast_bindoc.asp?doc_id=941&format=PDF or contact your Managers for further information.

In the next few issues of *CURRENTS*, we will feature one or more of the departments of the Shipowners Claims Bureau, Inc. and highlight the experience of those providing services for Members. We begin in New York City with the claims department who interface with Members on a daily basis in handling and managing incidents and claims around the globe.

MEET THE NEW YORK CLAIMS DEPARTMENT

The New York Claim Department gathering to say goodbye to Ms. Anna Quinn (second from the right in the front row) after 10 years of service to the American Club.

George J. Tsimis

SENIOR VICE PRESIDENT AND HEAD OF CLAIMS

Having earned his Bachelor of Arts from Tufts University in the late 1980s, George Tsimis was awarded a Juris Doctor degree from Fordham University School of Law in 1992 where he was honored with the Moore-McCormack Award for excellence in admiralty law.

From 1992 until 1999 Mr. Tsimis was an associate at the New York maritime firm of Chalos & Brown, PC where, inter alia, he was heavily involved in the civil litigation surrounding the EXXON VALDEZ casualty in Alaska. In 1999 Mr. Tsimis was a founding member of the maritime law firm of Skoufolous, Llorca and Ziccardi LLP in which he was head of its New York office.

Mr. Tsimis joined SCB in 2002, having initial responsibility for the American Club's growing Defense sector. In May 2005 he became Managing Director of Shipowners Claims Bureau (Hellas) Inc. in Athens where he had further responsibility for supervision of the American Club's claims handling and market liaison for its substantial Greek membership.

In October, 2007 Mr. Tsimis was appointed Head of Claims for SCB's global operations, returning from Greece to headquarters in New York in the summer of 2008.

Donald Moore

SENIOR VICE PRESIDENT AND CLAIMS MANAGER

Donald Moore joined the Average Adjusting Department of Shipowners Claims Bureau in 1992 as an Average Adjuster, and began working for the American Club management side of SCB in 1995. As Senior Vice President and Deputy Claims Manager, he is primarily responsible for personal injury, and admiralty (including collision, 3rd party liabilities, and pollution) claims.

Don began his insurance career as an Average Adjuster in one of the leading international insurance brokerage houses. He was later Vice President and Claims Manager of a New York insurance brokerage firm. He is a graduate of the Maritime College at Fort Schuyler; a former licensed Merchant Marine Officer, and retired from the Naval Reserve after 20 years, 17 as an Intelligence Officer. He is a Full Member of the Association of Average Adjusters of the United States, a subscriber member of the Association of Average Adjusters (The British Association), and a non-lawyer member of the Maritime Law Association.

Charles (Chuck) Gornell

VICE PRESIDENT AND CORRESPONDENT MANAGER

After attending Fairfield University and Sienna College, Chuck commenced working as a cargo loss adjuster for Chubb & Son, a large marine insurer in New York while he attended the College of Insurance in the evening.

He subsequently joined the American International Underwriters and was promoted to the position of Marine Claims Manager. Thereafter, he spent 22 years with Companhia Navegacao Maritima Netumar (Netumar Lines), a Brazilian shipping company in the capacity of Insurance and Claims Manager and rose to the level of Senior Vice President assumed the duty of managing the New York office.

Chuck then joining SCB in January 2000 and handles all forms of maritime claims, and with SCB specializes in Personal Injury and Cargo claims. He also represents the American Club on the International Group sub-committee, which oversees the worldwide network of correspondents.

Parker Harrison

SENIOR CLAIMS EXECUTIVE AND FD&D MANAGER

Parker Harrison earned a Bachelor of Arts degree with majors in Italian and German, followed by a Master of Arts in Italian, both from the University of Virginia. She then graduated from Tulane Law School, magna cum laude, with a Certificate in Maritime Law in 2001. Upon graduation, she was received the Lemle Kelleher Award for excellence in the study of maritime law.

From 2001 until early 2008, Parker practiced in the admiralty section of Chaffe McCall, LLP in New Orleans, where her litigation case load encompassed charter party disputes, cargo claims, collisions, personal injury and death cases, oil pollution, and other casualties. Her transactional work included negotiating charter parties and contracts of towage and affreightment, as well as some U.S. vessel documentation matters.

Parker joined SCB in early 2008 as FD&D Manager, although she also handles the full range of P&I claims, including personal injury, cargo, pollution, and the like.

THE AMERICAN CLUB 1917

Art Gribbin

VICE PRESIDENT AND SENIOR CLAIMS EXECUTIVE

In 1985 Mr. Gribbin received a Bachelor of Science in Marine Transportation Economics and a Third Mate's license from New York Maritime College, with Dean's List and Admiral's List Honors. After graduation, Mr. Gribbin worked as a Financial Analyst for United States Lines, a Reports Analyst for the American Bureau of Shipping, and sailed as Captain and Tankerman on various coastwise vessels.

In 1992 Mr. Gribbin received his Juris Doctor degree from St. John's University School of Law and began his legal career as a Trial Attorney for the United State Department of Justice, Civil Division, Admiralty and Aviation New York Field Office. As Lead Counsel, Mr. Gribbin defended and prosecuted over 300 maritime tort and contract actions before the U.S. District Courts and the Circuit Courts of Appeal on behalf of the U.S. Maritime Administration, the U.S. Navy, the U.S. Coast Guard, and the National Oceanic & Atmospheric Administration.

In 2002, Mr. Gribbin transferred to the Department of Justice, Civil Division, Commercial Litigation Branch, as Lead Counsel defending and prosecuting Customs actions on behalf of the U.S. Department of Treasury and the U.S. Customs Service before the U.S. Court of International Trade and the Federal Circuit Court of Appeals.

During his tenure with the government, Mr. Gribbin was awarded five U.S. Department of Justice Special Achievement citations and, in 1998, received the Department's Special Commendation Award from Attorney General Janet Reno for outstanding service in the trial of the QUEEN ELIZABETH II grounding litigation.

In 2004 Mr. Gribbin joined Shipowners Claims Bureau, where he focuses primarily on supervising and directing U.S. jurisdiction litigation concerning maritime loss of life, injury, collision, allision, grounding, and third party damage matters.

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Captain Sanjive Nanda
CLAIMS EXECUTIVE

Captain Nanda is a master mariner with an unlimited license with 17 years of sailing experience with the Great Eastern Shipping Company. After coming ashore, he handled U.S. and South America operations of Essar Shipping Company as head of their U.S. representative office before joining the American Club in early 2005.

Sanjive is very conversant with the tanker trade and practices. He handles incidents involving oil cargo, contamination, damage to fixed and floating objects (FFO), groundings, pollution, collision, and other routine cargo incidents and disputes.

George Grauling
CLAIMS EXECUTIVE

George joined SCB in 1995 after working for several years for the P&I correspondent, Steamship Agent, Steamship Company, as well as a large insurance firm dealing in marine insurance. George has been handling numerous files for Japanese carriers transporting steel from overseas to the United States. He recently became involved in cargo claims matters concerning American Club members as well.

Matt Miller
CLAIMS EXECUTIVE

Matt is a graduate of Kings Point Merchant Marine Academy and joined the Club in 2008. Prior to joining the Shipowners Claims Bureau, he sailed for two years as third mate on U.S. flagged vessels trading worldwide. Matt is currently in the process of obtaining a law degree at New York Law School concurrent with his duties at SCB. Matt handles cargo and personal injury claims as well as pre-load surveys.

Phil Worsdale
CLAIMS EXECUTIVE

Phil joined the Club in 2008, bringing with him 41 years of experience as a claims adjuster for U.S. based shipowners dealing with personal injury cases for American seafarers. He began his career in 1967 with Moore McCormick Lines and has worked with United States Lines, Farrell Lines and E-Ships before joining the Shipowners Claims Bureau earlier this year.

Muge Anber
ASSISTANT VICE PRESIDENT & CLAIMS EXECUTIVE

Muge Anber is a Turkish attorney admitted to the Istanbul Bar Association having graduated from Marmara University Law School, Istanbul (LL.B. 2001). She attained Masters of International Transportation Management and A.S.B.A. Graduate Certificate in Chartering Operations at the State University of New York Maritime College at Fort Schuyler (M.S. 2004). Ms. Anber also studied Master of Laws at Hofstra University School of Law's evening program (LL.M. 2007) and obtained her admission to the New York State Bar.

Before coming to New York, she practiced maritime law at Atamer & Karaman Law Firm, Istanbul. From 2004 to 2006 Ms. Anber worked as a foreign registered associate at the New York office of Fowler, Rodriguez & Chalos L.L.P., where she has practiced her experience in various admiralty cases. Ms. Anber joined SCB in 2006 and handles principally FD&D and P&I matters.

EDITORIAL

by: Dr. William H. Moore
Senior Vice President, Risk Control
Shipowners Claims Bureau, Inc., New York;
and Chairman, Joint Maritime Safety
Committee & Marine Environmental
Protection Committee—Working Group
on the Human Element, International
Maritime Organization

The International Safety Management (ISM) Code celebrated its 10th anniversary on July 1, 2008 when vessels first began mandatory implementation of the Code. Interestingly, the day went by with relatively little fanfare and no particular retrospective look into how effective the Code has been in addressing the human element at sea. There are many reasons to develop and implement the Code in the era of a growing awareness of the role the human element plays in maritime casualties. In 1995 a major revision of the Standards of Training, Certification and Watchkeeping (STCW) Convention had been agreed to and began to take effect in 1997.

But awareness was growing on the role that the shoreside management plays in the causation of maritime casualties. It was commonly said at the time, "Why do we have standards for seafarers operating the ship but not the companies who own the ship?" It was a convincing argument.

The actual wording of the Code is quite extraordinary. At the last meeting of the Maritime Safety Committee (MSC), amendments to the Code were up for consideration by the Committee. As Chairman of the Working Group tasked with consolidating these proposals for consideration by the MSC at that session, I was particularly impressed with the number of solid and reasonable proposed amendments that were found to be already addressed in the wording of the Code. This is a testament to the thoughtfulness that went into the wording of the original Code.

The well worded Code is one thing, but implementation of these ideals is yet another challenge. The ISM Code was so dramatically contrary in philosophy to other IMO regulatory instruments. Basically, it required the "Company" as defined in the Code, to ensure that it complied with the principles set forth by the Code and not a set of defined technical requirements. There were growing pains that many companies endured to adapt to this new concept.

Have we made progress in safety through implementation of the Code? I do believe the Code has helped a significant share of the maritime industry develop a compliance culture. But has it helped the industry enough?

In the fall of 2007, a three month Concentrated Inspection Campaign (CIC) was carried out during port State control inspections by both the Paris Memorandum of Understanding (MoU) and the Tokyo MoU to verify whether the ISM Code was being effectively implemented. One out of five inspections yielded at least some deficiency in the ship's SMS including 1,868 non-conformities and 176 detentions. Is there room for improvement? Based on these figures, absolutely!

We have seen a significant drop in the frequency of casualties in the last 10 years as the result of a number of safety initiatives. Unfortunately, we have seen a dramatic increase in the cost per incident during that time as a result of a less tolerant general public particularly in the area of environmental protection and pollution.

The comments of Captain Gayton and Mr. Molloy will shed some light on some details of the concerns of ISM Code compliance.

> "I was particularly impressed with the number of solid and reasonable proposed amendments that were found to be already addressed in the wording of the Code."
>
> —*Dr. Moore*

DOES THE INTERNATIONAL SAFETY MANAGEMENT CODE WORK IN THE REAL WORLD?

by: Captain Richard Gayton
Vice President and Principal Surveyor
Shipowners Claims Bureau, Inc., New York

The International Safety Management (ISM) Code represents the cornerstone of an International Maritime Organization (IMO) approach towards a safety culture, with the emphasis on the human element. The International Safety Management (ISM) Code evolved through the development of Guidelines on Management for the Safe Operation of Ships and for Pollution Prevention adopted in 1989 at the 16th regular session of the IMO Assembly by resolution A.647(16). The objective of the Code was to provide an international standard concerning shipboard and shore-based management. The Code subsequently became mandatory for passenger ships, high-speed craft, oil tankers, chemical tankers, gas carriers and bulk carriers on July 1, 1998. It was extended to include all other cargo ships and to mobile offshore drilling units of 500 gross tonnage and upwards on July 1, 2002.

The IMO envisaged that the outcome of the successful implementation of the ISM Code would provide an enhancement for safety culture and awareness throughout the shipping industry.

THE ORIGINS OF THE ISM CODE

On the night of March 6, 1987, the British marine industry suffered one of the worst peacetime sea disasters in modern history. The incident occurred outside the Belgian port of Zeebrugge, when the passenger/car ferry HERALD OF FREE ENTERPRISE capsized with the loss of 193 lives. The subsequent official enquiry into the accident revealed major errors on the part of the vessel's management at multiple levels. As a result of the enquiry, the United Kingdom requested that the IMO immediately investigate measures designed to improve the safety of roll-on/roll-off ferries. This request was acted upon during the 15th session of the IMO in November 1987. This call was accepted through Resolution A.596(15) entitled "Safety of Passenger Ro-Ro Ferries" which instructed the IMO's Maritime Safety Committee to develop guidelines regarding shipboard and shore-based management of Ro/Ro ferries. The proposed recommendations were considered and unanimously adopted by delegates of countries attending the April, 1988 committee and subsequently formed Resolution A.647 "Guidelines on Management for the Safe Operation of Ships and for Pollution Prevention."

THE PURPOSE OF THE ISM CODE

The IMO intended the ISM Code to provide a medium for shipowners to create their own programmes, individually tailored to meet comprehensive international standards for safety and pollution prevention in the operation of vessels. The stated purpose of the ISM Code is to establish minimum standards and it sets out responsibilities of both shore-based and shipboard personnel to allow for integration into a common system designed to eliminate accidents caused by human error and to promote the development of a widespread safety culture and environmental conscience in shipping.

The Code was not intended to create specific operating rules and regulations, but just to provide a broad framework for vessel Owners and Operators to ensure compliance with existing regulations and codes. It also sets forth the Safety Management System objectives, which "should" be adopted by companies.

The Safety Management System (SMS) provides the framework for compliance with the Code. It is a written system of safety and environmental protection policies and procedures to be followed by the vessel and shore-based personnel. The Code contains specific functional requirements for the SMS as follows:

- Safety and Environmental Protection Policy;
- Instructions and procedures to ensure safe operations and environmental protection in compliance with relevant international and flag-State legislation;
- Defined levels of authority and lines of communication between and amongst shore and shipboard personnel;
- Procedures for reporting accidents and non-conformities with the SMS and the code;
- Procedures to prepare for and respond to emergencies;
- Procedures for internal audits and management reviews.

SO WHAT'S GOING WRONG?

It would appear that although the Code was designed to promote a global "safety culture," it has not been effective in many cases. Club surveyors and various Port State Control (PSC) inspectors continue to find widespread indicators that the various Safety Management Systems (SMS) are not functioning correctly or indeed at all in some cases. Deficiencies such as: no oxygen meter on board or a meter that is non operational/mis-calibrated; no enclosed entry permit system in place; no hot work permit system in place; no safety meetings carried out or reported; Oily Water Separator (OWS) not working or calibrated; Oil Record Book (ORB) not properly kept; internal audits not completed and non-conformities not acted on or not reported. This list is by no means exhaustive. However, it indicates a general failure of the "safety culture and human element" of the shipping company involved. These are all failures that should have been addressed by any prudently run vessel management system, even prior to the arrival of the Code and associated SMS.

When asked to comment on the Code, many mariners today will immediately respond with, "There is too much paperwork." Increased paperwork and the amount of electronic correspondence for the master is giving cause for concern. It would appear that the master is being sidetracked from his primary purpose of working the ship. Checklists have always been useful guides to procedures, but is the mariner becoming a slave to procedure and just ticking boxes on some checklist, rather than using his/her training, basic knowledge and common sense to identify and manage the risk attached to a particular activity? Reduced manning is another area of concern and mariners have complained that they don't have the manpower or time to complete the extra work involved with the SMS. Other familiar complaints include such statements as: "There are voluminous procedure manuals," "The SMS is just a paperwork exercise" and "There is no support from the Company."

It is a fact that many Owners continue to struggle to implement the ISM Code, because of an inadequately functioning SMS. Unfortunately there are also Owners around, who would still like to have the Code's "Document Of Compliance" without putting any systems in place. It is also evident that many SMSs are simply bought off the shelf and as such are generic and normally voluminous in order to cover various vessel types and scenarios. A Shipowner who places this type of SMS on board, simply because it is a regulatory requirement, will probably have a weak "safety culture."

The SMS can only work if those who are involved in its implementation actually "want" it to work. A truly safe operation is not simply "having" an SMS especially one that is only practiced mechanically. An effective SMS requires the presence of an effective "safety culture."

A successful SMS starts at the top and a good "safety culture" with good leadership. While regular management reviews should be completed by the Shipowner's safety staff, it is important that senior managers know and accept that they are accountable for the safety performance. They therefore must take part in and have control of safety decision making. If the SMS is properly set up, monitored and non-compliances addressed and acted upon from the top, then a good "safety culture" will be developed along with mutual respect between seagoing staff and shore-based managers.

In conclusion a well functioning SMS is normally tailor-made for the vessel and includes such benefits as reduced paperwork, procedures, manual and reports. Good leadership from the top will help promote a sense of purpose and awareness throughout the organization and promote a true "safety culture." Good two-way communications between the vessel and shore-based managers is also vital and helps create a sense of empowerment for the personnel involved in the daily operation of the system.

BIRTHDAY WISHES FOR THE INTERNATIONAL SAFETY MANAGEMENT (ISM) CODE

by: Michael Molloy
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The tenth anniversary of the first mandatory implementation date for the ISM Code has prompted much retrospection and not a little introspection. Arbitrary though such landmarks may be, the urge to pause and reflect on these occasions seems to be almost universal. Rather like a middle-aged man approaching yet another "significant" birthday, we seem driven to ask, with urgency not to be found at other times, "How did it go?" "Was it worth it?" and "Where do we go from here?"

Our inclination to focus on questions like this at particular intervals may appear irrational, but the questions themselves are no less worthy of our attention because of it. Let us take the first two questions together.

For the Kelvinists among us, the answers must lie in measurement and numerical analysis. There just has to be a definitive statistical indicator out there somewhere that will prove beyond all doubt the success or otherwise of the ISM Code. It is simply a matter of knowing where to look. Unfortunately, the quest for such a number is futile.

It was apparent from the outset that, if the Code was to have the impact that was anticipated, a fundamental change in attitudes and culture would be required throughout the industry, and that this would take time; several years, if not a generation or two. There was no point in attempting to measure its effects too soon. But the longer we leave it, the more those effects are masked by the impacts of other regulatory changes, technological advances, improvements in working practices, changes in the way that data are defined, gathered and analyzed and so on.

But, does it matter? There is a great deal of qualitative evidence available that is at least as reliable and informative as any statistic. Those who carry out audit and certification work every day in hundreds of companies and on thousands of ships have a very clear impression of the Code's impact. They will tell you that the results have been mixed. Some companies have embraced the Code and benefited greatly. Some already good operators have surprised themselves and done even better. Others rub along, not altogether convinced. And the rest we all know about.

This analysis could be applied to every regulation ever enacted but, in the case of the ISM Code, it is often presented as a cause for condemnation. Since the ISM Code was introduced, collisions, groundings and other incidents have been quickly followed by articles, speeches and papers insisting that it has all been a waste of time and effort, and that the Code should be torn up. "There you are," they say, "we told you so." The underlying assumption appears to be that the ISM Code was intended to eliminate all risk and provide a guarantee that there would never again be another accident.

In a recent article, the author asserted that the Code had failed and should be withdrawn because there was evidence that some ISM certificates were fraudulent. This is all very strange. There is ample evidence of fake certificates of competence, but no one proposes that we stop training seafarers. Deficiencies are often found in areas covered by other statutory certificates, but no one suggests withdrawing SOLAS or MARPOL. It is not clear why, of all the rules and regulations governing shipping, only the ISM Code is expected to deliver perfection.

So, has the ISM Code worked or not, and was it worth it? In a very important sense, these are the wrong questions. The implementation of the Code was not a single event to be evaluated like the introduction of a technical fix that either worked or did not. It is a process. The question we should be asking is not, "Has it worked?" but "Is it working?" The answer is that it has begun to work. Is it worth continuing the effort? Most certainly it is.

So, where do we go from here? There is no doubt that things could be improved. The process began badly and is still struggling. But it can be made to work better.

To achieve this, we need to understand why the Code had such a difficult birth and why it continues to be controversial.

To begin with, it was oversold. For a variety of reasons, the impression was allowed to take hold that it was a panacea and, as a consequence, expectations were too high. The results were always going to disappoint. The Code was to be the single, all-embracing remedy for all that messy, ill-defined and difficult stuff that lurks wherever people are to be found. Unfortunately, and to everyone's consternation, people persist in being complicated, unpredictable and wilful.

It was oversold to an industry that was underprepared for it. Before the Code's introduction, shipping regulation had consisted almost entirely of very detailed, very prescriptive, technical rules. For the first time, ship operators were confronted by a set of requirements that were anything but detailed, were deliberately non-prescriptive and contained not a single technical term. Achieving compliance would require a completely different approach.

The qualifications of those whose job it was to make it all work—ashore and on board—were also mostly technical. People with no management qualifications, no training in systems thinking and no understanding of organisational design and culture were left to develop, implement and maintain their own management systems and create a safety culture. No attempt was made to inform and educate the people upon whose understanding, acceptance and effort the whole enterprise depended. Even now, the ISM Code features in seafarer training courses as just another piece of regulation to be complied with.

There are many other reasons for the Code's difficulties. It still prompts the usual human response to anything new and different; not all organisational cultures are amenable to more formal, systematic ways of working; the Code's introduction in more deferential and strongly hierarchical societies continues to be difficult; old attitudes persist; myths and misunderstandings abound.

Not everyone holds views of the Code as negative as those described above, but even among those who support it in principle, there is widespread unease about just how effective it has been. They worry that momentum has been lost and wonder what can be done to revive it.

Unfortunately, as so often happens when a set of requirements appears not to have had the intended effect, the response has been to tinker with the regulation itself. There are constant demands for changes to the Code and piecemeal amendments to the associated guidelines. Some want additional requirements, while others want to make existing requirements more prescriptive. There have even been attempts to introduce more prescription disguised as guidance.

Many industry organisations lack confidence in the Code. Nervous about the lack of prescription and seeking precise measures of an operator's ability to reach an acceptable standard according to their own preferred criteria, they have developed checklists and inspection processes of their own. Each one is presented as the "successor" to the ISM Code or is described as "going beyond" it; in other words, the next magic bullet.

I think we are missing the point. There are useful ways in which the Code could be amended and the wording could be clarified, but if we are to bring about the significant improvement that so many would like to see, we need to step back and take a much broader view. We must create the conditions in which the objectives of the ISM Code are more likely to be achieved. The following steps would be a beginning:

1. A fundamental re-appraisal of training from the point of view of management, systems and organisational design to promote understanding and acceptance of the principles that underpin the Code and provide the skills necessary to improve implementation.

2. A thorough revision of the guidelines to administrations to produce a coherent document based on the many lessons learned since the Code's introduction.

3. Enhancement of the Code, not by simply adding to the list of operational requirements, but by incorporating provisions that embed within it genuine systems and human factors concepts.

4. An examination of the audit and certification process in the light of experience during the past decade.

5. A coordinated, industry-wide initiative to rationalise the plethora of audits, inspections, surveys and assessments that impose excessive demands on ships' crews, create pointless repetition, cause people to see the ISM Code as just one more in a long list of rules and bring the whole regulatory process into disrepute.

Many will view this as an idealistic wish list, but the ISM Code has long-term implications for the regulation of shipping that go far beyond its significance as a piece of regulation per se, and it is important to realise that what has been created is a foundation, not an edifice. Many more elements need to be brought together, in a systematic way, before the building is complete. Endlessly chipping away at the cornerstone will not get the job done.

This article is the third and final part of a three-part series of articles on hatch cover inspection and maintenance prepared by Mr. Walter Vervloemsem from International Marine Consultants & Surveyors (IMCS) in Antwerp, Belgium. The first two parts of the article were issued in the November 2007 and May 2008 issues of *CURRENTS*.

HATCH COVER INSPECTIONS AND MAINTENANCE

THE BASICS PART III

DRAINS

The hatch cover drain system is the last safety barrier which is fitted to avoid water leaking into the vessels hold under conditions that are beyond the packing rubber design parameters/compensating capacity. As the packing rubber/compression bar interface may open up in such conditions, water will penetrate through the sealing arrangements and be collected in the drain channel. In order to allow incoming water to be drained away, drain pipes and drain valves should be clean and obstructions-free This includes drain channels on the coaming and in way of the cross joints and the drain hole in the coaming. The presence of rust or cargo remnants in the drain channel will prevent incoming water from reaching the drain holes in the coaming drain channel. This will result in water accumulation in way of the barrier/blockage and will eventually cause incoming water to pass over the inboard hatch rim into the hold and potentially wetting damage to the cargo.

Also, the inboard hatch rims should be sufficiently high and free of damage. Often they are found to be rusted or damaged as a result of contact with cargo gear or cargo. Drain valves should be fitted with a non-return system (floats/balls/non-return valves/flaps) to prevent water entering the cargo holds when the ship is at sea. Routine inspections should be carried out in order to ensure that the non-return system is functioning properly.

As required by the Safety of Life at Sea (SOLAS) Convention, vessels fitted with a fixed gas fire extinguishing system should be provided with means to close all openings which may admit air into or allow gas to escape from a protected space. Moreover, vessels can only be exempt from carrying fixed fire extinguishing installations if fitted with steel hatch covers and have effective means of closing all ventilators and openings leading to the cargo spaces. It will be understood that drain valves that provide direct access to the cargo holds should be closed tight in a proper manner. This is generally arranged through a threaded so-called "fire-cap" connected with a lanyard to the drain valve. The fire cap closes the discharge mouth of the drain valve whenever necessary.

Accumulation of rust scale in drain channel

Blocked drain hole/valve, preventing water to be drained away to the deck

Original non-return type drain valve with fire cap secured with a lanyard

HATCH COVER PANELS

With most of the component parts having been mentioned under the previous items, one would almost forget that the hatch opening itself has to be covered up. As a thin plate would succumb under water pressure from hull distortions or water loads while at sea, panels have to be sufficiently strong to withstand the rigors of an ocean voyage. Minimum strength requirements for weathertight covers are laid down in the International Convention on Load Lines. Generally, hatch cover construction will either be of the open-web structure, double-skin structure or box-beam structure. In addition, and with hatch covers being used for the loading of deck cargo and containers, the panels must be able to withstand water loads and hull distortions at sea and enormous loads and stresses caused by the carriage of deck cargoes. It is clear that any reduction in scantling, deformations or damages will adversely affect the panel strength.

In many cases, repairs to hatch covers (such as renewal of panel stiffeners, doublers on top plating in case of holes, renewal of retaining channels or panel top plate edges in the cross joint area) are considered to be a straightforward type of repair which can easily be done by the ship's fitters or a riding maintenance team. However, it should be remembered that steel repairs can cause deformations in the panel structure and this generally requires a specialist's attendance to check and ensure that panels remain straight and level. For repairs to panels, bearing pads, coamings and hatch cover related steel repairs in general, it is recommended that a repair program is done in deliberation with hatch patentees and class.

Cracked panel girder (stress crack)

Corroded panel structure

THE BASICS PART III

OPENING/CLOSING MECHANISMS

Panels are generally designed to meet the specific requirements of the type of ship and its specified trading pattern. The time and/or manpower required for opening/closing and battening down hatches as well as specific requirements for intended trading pattern will determine the level of investments made in opening/closing systems. Options include hydraulic power packs or sometimes extra generator sets to power a separate power supply or panels can be opened by means of shore gantry cranes like the lift-away types of pontoons on today's container ships.

Generally, and in view of the weights involved, powerful equipment is required to open/close the hatch covers and electro-hydraulic power packs are generally used for this purpose. Hatch covers are heavy pieces of moving equipment that can make them a threat to life and limb and therefore safe working procedures should always be observed and necessary training should be given to those who are appointed to operate the systems on board.

The use of hydraulically operated equipment includes the risk for leakage (both unexpected failure of hydraulic lines as well as chronic leakage) that can result in spillage of oil on deck (a slip and fall hazard) or in the docks/port (a pollution hazard). If hydraulic oil is spilled onto the cargo while still being stowed in the ship's holds, contamination claims are likely to follow. Moreover, spilled hydraulic oil is expensive and its loss can have economical and operational consequences. Apart from the electro-hydraulic opening/closing arrangements panels can be opened with wires, chains, shipboard-operated cradles or straightforward lift-away pontoons. Also for these types of hatch cover opening and closing mechanisms, proper adjustment and maintenance is required if the system is to be safe, reliable and operating against the design criteria.

Leaking hatch cover cylinders might cause...

... oil spillage.

Safety first! Never put your hand on a panel trackway and...

...never secure panels in an improper way.

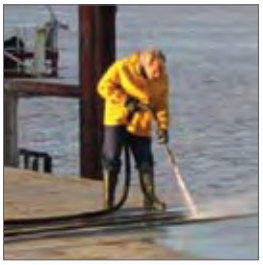
TESTING OF HATCH COVERS

Apart from the fact that hatch covers need to be visually inspected to obtain a good idea of the overall maintenance status, a visual inspection alone is not enough to conclude that the hatch covers are fit for duty and testing will be required.

Until the 1990s hose testing had been the traditional test method preferred by classification society surveyors and was eventually copied by the ship's staff, superintendents and other surveyors. If the hatch cover leaked in port, then one can assume that they would certainly be leaking at sea when the ship would be flexing and twisting in a non-static (dynamic) sea state.

However, during hose testing in port, the packing rubber/compression bars are subjected to direct contact with water. Normally, the physical contact between the packing rubber and compression bar/surface will be sufficient to keep water out, but in cases of slight contact, the packing rubber/compression bar interface might easily open up on passage and allow water to penetrate. If this occurs, incoming water would first be collected and drained away via the drain channel (i.e. third and last safety barrier) onto the deck. Only when the amount of incoming water would be in excess of the drain channel's capacity, would it leak in the ship's hold. If water leaked into the hold during a hose test in port, then this would indicate that the size of the leak was such that the capacity of the drain channel was not sufficient to drain the incoming water away and consequently lead to a larger leak. Smaller leaks which might be dealt with by the drain system whilst in port might become more significant whilst at sea.

It is therefore very easy to overlook if water is leaking out of a drain valve during a hose test. This could result in a ship being passed for loading on the basis of a "no water in hold" standard, whereas actually the hatch covers would be leaking, which would be a potentially dangerous situation.



Hose testing cross joints and...

... checking for water in the holds...

...whereas water dripping out of the drain valve (and being collected in a plastic bag fitted to the drain valve for testing purposes) would be a first indication that the weather tightness of the panels is impaired.

THE BASICS PART III

One further drawback with a hose test is that it is only able to conclude whether there is a physical contact between the packing rubber and compression bar. Hose tests give no indication of the compression status of the packing rubber. It is important to note that it is precisely the compression of the packing rubber that will provide weather-tight integrity as it allows the packing rubber to compensate for movements of the vessel whilst in a seaway.

Obtaining an idea of the compression status of the packing rubber is only possible by using the ultrasonic test method. In order to understand how ultrasonic testing works, a few basic principles have to be understood. Ultrasonic waves are high frequency waves which do not penetrate barriers very well. Ultrasonic testing requires a transmitter, which emits artificially created ultrasounds, to be placed into the ship's hold. A portable receiver can then trace any ultrasonic signals around the hatch cover packing rubber/compression bar interface.

As ultrasounds do not pass through barriers, any area where there is no barrier will allow ultrasounds to pass. Therefore, wherever there is a discontinuity or unevenness in the weathertight seal (even when very small/minor), ultrasounds, which are airborne sound waves, will pass through the deficient packing rubber/compression bar interface. Where sufficient compression is exerted by the packing rubber on the compression bar, ultrasounds will not be able to pass through the packing rubber/compression bar interface and hence no sound will be picked up by the ultrasonic receiver indicating a satisfactory status. Subsequent traces of ultrasound would therefore indicate that the compression was impaired and that weathertightness was affected. In order to obtain a good idea of the magnitude of the "leak" (actually "loss of compression"), the operator will take a reference value by measuring the strength of the signal through the open hatch (prior to carrying out the test open hatch value (OHV)). The operator will then compare the signals obtained in potentially "leaky" areas (after the hatch is closed and battened down) with the OHV.

Placing the ultrasonic transmitter in the hold

Taking a reference "open hatch value"

Detecting leaks with "pin-point" accuracy

As hatch covers are only designed to be weathertight and not airtight, a certain amount of loss of compression is allowed before hatch covers are considered to be potentially "leaky." The industry has therefore established an acceptable loss of compression of 10% of the OHV. For example, when an OHV of 50dBµV is obtained, a hatch would be considered to be potentially "leaky" when readings of 5 dBµV or more are measured in way of the hatch perimeter or cross joints. Basically, this means that in such cases, the compression of the packing rubber is impaired to such an extent that its flexibility and compensating capacity would no longer allow the seal to maintain a weathertight while the ship is in a seaway.

It is not uncommon for P&I condition surveyors to be challenged by the master or superintendent, who may argue that the ultrasonic test results are inaccurate. They generally base this fact on successful hose test results completed before the ultrasonic test took place. In such cases the ship's staff should first be asked whether they have checked that no water was leaking form the drain valves. The ship's staff should clearly understand that with a hose test, contact between the packing rubber and compression bar is only confirmed, whilst with an ultrasonic test, the operator is trying to obtain an idea of the compression status in way of the packing rubber and compression bar interface. As we should refrain from comparing "apples with lemons," we should also not be comparing "hose test results" with "ultrasonic test results." As it is the packing rubber "compression," that is the key issue in establishing the hatch cover weathertightness, it should be appreciated that ultrasonic testing provides a more comprehensive test and enhanced security.

The results of ultrasonic tests will depend largely on the operator's knowledge and the equipment being operated. Ultrasonic equipment should be of a Class-approved type and be properly calibrated. In this respect, it should be noted that repeatability (i.e., will the same reading in a particular location be obtained during a test in Antwerp and 2 weeks later in the USA?) is one of the requirements to be included in the class type approval conditions. Furthermore, class approval will also include checks for robustness (is the equipment sufficiently strong to be used in a marine environment?) dropping/falling, radiation, electric discharge, influence of humidity, temperature, etc.

Once the equipment is approved in line with the highest standards, it will be appreciated that the operator must be familiar with the equipment. No ship owner would like to have his hatch covers diagnosed by an incompetent person who is using improper or non-calibrated equipment. Especially when test results would indicate that re-rubbering of all hatch covers would be required or that extensive repairs or adjustments have to be carried out which would result in high costs and delays. This is one of the reasons why operators of ultrasonic tightness testing equipment who are acting as class service suppliers are required, under IACS UR Z17, to use class type approved equipment and be able to demonstrate that they have basic knowledge of hatch cover designs and maintenance, and are able to prove that they have received a practical training/demonstration on board of a ship.

CONCLUSIONS

The basic principles above demonstrate that although hatch covers are heavy and robust pieces of equipment, they are actually fine pieces of engineering, and maintaining a weathertight seal can be a matter of millimeters.

The fact that we still see so many problems that are related to hatch cover operation and tightness is because hatch covers simply do not get the attention they deserve, and because it is systematically overlooked that clearances and tolerances of a few millimeters have to be respected if we want the system to work well. The combination of lack of maintenance, non-familiarity with hatch cover basics, and non-professional inspections/tests is one that can lead to setbacks resulting in loss of life, injuries, and entail high costs as compensation for property damage and legal assistance.

It should be remembered that only a combination of a detailed visual inspection and proper testing will provide sufficient information to conclude that hatch covers are weathertight, well maintained and that due diligence can be proven in case a claim should be filed against the ship.

Hopefully, this article will allow surveyors in finding answers to basic hatch cover related problems which they will see during the execution of their day-to-day business on board, and in identifying the main/root causes of the these problems which will be of interest to their principals and decision makers in the maritime industry.

Only the right diagnose will allow the industry to analyze the problem in a proper way and work out proper guidelines which will reduce the number of claims as a result of hatch cover problems.

Readers who would like to know more about hatch covers and hatch cover inspections might find additional information on the subject in the author's "Hatch Cover Inspections" book (published by the Nautical Institute), Videotel's production "Hatch Covers — A Practical Guide" or by attending the SDT — IMCS hatch cover training course. For further information readers can also contact the author by e-mail on waltervervloesem@telenet.be.

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WINTER STORM
THE CONSUB DELAWARE DECISION

The Second Circuit Upholds Rule B Attachments of Electronic Fund Transfers, but the Winter Storm Watch Is No Longer In Effect?

This article will review the current state of U.S. maritime attachment law in the context of electronic funds transfers (EFTs) at intermediary banks, especially in light of the U.S. Court of Appeals for the Second Circuit's recent decision in Consub Delaware LLC v. Schahin Engenharia Limitada, No. 07-0833-CV (2d Cir. 2008), which was just published on September 23, 2008. The discussion will also recap the earlier decisions of the Second Circuit on maritime attachments of EFTs, and conclude with the thoughts and insights of many of the leading members of the New York Bar regarding the future of Rule B attachments in the wake of the Second Circuit's latest decision on this topic.

THE RULE B STORM BEGINS: WINTER STORM, AQUA STOLI, AND FOOTNOTE 6

We have been advising our Membership of a maritime creditor's ability to attach EFTs at intermediary banks in New York as far back as our November 2003 *CURRENTS* issue when the Second Circuit first authorized this mechanism in Winter Storm Shipping, Ltd. v. TPI, 310 F.3d 263 (2d Cir. 2002). In the aftermath of Winter Storm, maritime claimants worldwide, including many of our Members, used Rule B attachments to secure and, in many instances, prompt settlement of their claims against charterers, other vessel owners, shipyards, and other opponents. The effectiveness of Rule B attachments resulted in a flood of proceedings commenced in New York federal court and, in most instances, involved litigants that were nowhere to be seen or found in New York. In fact, the vast majority of Rule B applications involved efforts to obtain security in aid of foreign arbitrations (usually London) or foreign court proceedings.

With literally dozens of applications for maritime attachment being filed each week, several judges of the Southern District of New York began to question the soundness of the Winter Storm decision. Perhaps in response to a perceived abuse of the mechanism, judges began allowing EFT attachments as a matter of necessity, despite the fact that the language of Rule B itself contained no such requirement. By its own terms, Rule B only requires that the plaintiff have a maritime claim, that the defendant cannot be found within the District, and that the defendant's attachable property is in the District. The application by some judges of the "needs" test resulted in several inconsistent decisions at the district court level, culminating in the Second Circuit's 2006 decision in Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd., 460 F.3d 464 (2d Cir. 2006).

In Aqua Stoli, the Second Circuit eliminated the "needs" test and severely restricted the circumstances under which a Rule B attachment could be vacated. While the Aqua Stoli decision eliminated the confusion created by the brief

reign of the "needs" requirement, it did not end the debate regarding whether EFTs could be attached. Rather, in the infamous footnote no. 6 of its decision, the Second Circuit commented:

> *The correctness of our decision in Winter Storm seems open to question, especially its reliance on Daccarett, to hold that EFTs are property of the beneficiary or sender of an EFT. Because Daccarett was a forfeiture case, its holding that EFTs are attachable assets does not answer the more salient question of whose assets they are while in transit. In the absence of a federal rule, we would normally look to state law, which in this case would be the New York codification of the Uniform Commercial Code, N.Y. U.C.C. Law § 4-A-502 to 504. Under state law, the EFT could not be attached because EFTs are property of neither the sender nor the beneficiary while present in an intermediary bank. Id. §§ 4-A-502 cmt. 4, 4-A-504 cmt. 1.*

Footnote no. 6 spawned a series of challenges to the validity of Rule B attachments of EFTs at intermediary banks, and invited another appeal before the Second Circuit on this very same issue. Because the Rule B landscape became mired once again in the aftermath of Aqua Stoli and its footnote no. 6, we at the Association commenced our Winter Storm-watch and, in recent issues of *CURRENTS*, we began to monitor the string of decisions that attempted to chip away at the Rule B monolith.

THE CONSUB DECISION

Several parties seeking to vacate Rule B attachments were quick to accept footnote no. 6's invitation to revisit the Winter Storm ruling. One such party was the defendant in Consub Delaware LLC v. Schahin Engenharia Limitada. In Consub, the plaintiff, seeking to secure its claims under a maritime contract, attached an EFT that had been remitted by Schahin to a third party. Schahin then moved to vacate the attachment on two bases. First, Schahin argued that Winter Storm was incorrect, that the EFT was not property, and that New York State law (which effectively precludes restraint of an EFT) should govern any analysis as to whether the EFT was the property of the defendant. Second, Schahin argued that clauses in the underlying contract that called for exclusive jurisdiction in the English Courts precluded Consub from seeking a maritime attachment in the United States. The District Court denied Schahin's motion to vacate and Schahin subsequently appealed the decision.

Affirming the lower court, the Second Circuit rejected Schahin's arguments and stated in no uncertain terms that its prior ruling in Winter Storm was proper. Specifically, it stated: "Our holding today ought to jettison any speculation that this note in Aqua Stoli foretold the demise of Winter Storm." The Second Circuit went on to reject Schahin's argument that New York law should govern the question of ownership of the EFT at the time of the attachment. The Court noted that the remedy of maritime attachment had been created under federal law because maritime parties are peripatetic and their assets often transitory. Since Rule B was derived from federal law, there was no reason whatsoever to look to New York State law for guidance.

The Second Circuit also disposed of Schahin's argument based on the forum selection clause in the underlying contract. The Court referred to the plain language of the agreement and noted that there were no provisions that divested the court of its jurisdiction or otherwise precluded the plaintiff from seeking security in New York federal court.

The Consub ruling is particularly significant not only because it presented the most recent challenge to maritime attachment of EFTs, but because this challenge was joined in by many of the clearing house banks, anxious to rid themselves of Rule B attachments. Contending that the rash of Rule B attachments in recent years had created an undue administrative burden, the banking industry filed amicus briefs in support of Schahin's appeal and sought to convince the Second Circuit that the protections afforded by the New York State Uniform Commercial Code should apply in a Rule B setting. Thankfully, the Second Circuit did not find any of these arguments persuasive and upheld the spirit of Rule B.

The one issue that the Second Circuit expressly declined to resolve -- again in a footnote -- is whether EFTs to a defendant can be attached. In footnote no. 1, the Second Circuit stated: "We do not reach today the question of whether funds involved in an EFT en route to a defendant are subject to a Rule B attachment." The EFT in the Consub Delaware case originated from the defendant debtor. While the Court in Winter Storm -- the first of the three recent Rule B decisions by the Second Circuit since 2002 -- generally held that EFTs were attachable property, it did not distinguish between EFTs being transmitted to and from defendants. The Aqua Stoli Court indicated that

WINTER STORM

CONTINUED FROM PAGE 27

funds going to or from a party are attachable, but there is some question as to whether this indication is simply dictum or part of the holding. Several defendants in later cases have seized on that distinction in an effort to carve out an exception where the EFT is en route to a defendant at the time of seizure, arguing that in Winter Storm (upon which Aqua Stoli bases its conclusion that EFTs are attachable property), the funds were being sent from the defendant. While the Second Circuit has made clear in Consub that it did not reach this specific issue, the dictum in Aqua Stoli (indicating that funds are attachable regardless of whether they are moving to or from the defendant) constitutes the majority view of the judges at the district court level.

It is very unlikely that the United States Supreme Court will entertain an appeal of the Consub decision because such an appeal is not available as a matter of right to Schahin. Rather, Schahin must file an application for a writ of certiorari seeking leave from the Supreme Court to appeal these issues. The Supreme Court rarely grants such writs and, on average, less than 5 per cent of such applications succeed each year. Aside from this statistical obstacle, Schahin would also have to demonstrate that there are issues in controversy that have caused a serious split between two or more Circuit Courts of Appeal. Because most Rule B attachments of EFTs take place within the Southern and Eastern Districts of New York -- where most all of the intermediary banks are located -- no such split of authority exists between the Circuits.

FOR ADVOCATES AND PROPONENTS OF RULE B, CONSUB IS A DECISIVE VICTORY. It portends that maritime attachment as we have known it during the past six years after Winter Storm will survive and continue to thrive. However, with yet another footnote inviting further appeals, we must ask ourselves what lies ahead for future applications for Rule B attachments of EFTs passing through the numerous intermediary banks in New York? To try and provide us with some additional guidance on what we can all expect in the realm of Rule B after Consub, we have asked several Members of the New York Bar to comment. This is what they each had to say:

Peter Gutowski, Esq.

FREEHILL HOGAN & MAHAR, LLP

"The Second Circuit's decision in Consub is significant for several reasons, but perhaps most importantly, it signals in our view an end to the efforts by the clearinghouse banks to avoid future attachments on the basis that EFTs are not considered attachable 'property' pursuant to state law. The issue ostensibly left open by the Court (i.e. whether funds en route to a defendant are also attachable) would also appear doomed given the Circuit Court's endorsement (for the third time) of the Rule's effectiveness against EFTs. By force of logic, if a plaintiff can seize a debt owed to a defendant by service upon the third party creditor itself, it follows that a plaintiff should be able to seize that debt when it is personified in the form of an EFT to the defendant. Further, if an EFT from a defendant is attachable (as in Consub), it seems to make even more sense that an EFT to a defendant is likewise a fair target since the beneficiary (i.e., the defendant) arguably has the greater interest as the intended recipient."

Keith Heard, Esq.

BURKE & PARSONS

"The law on Rule B attachments has developed quite rapidly since the Winter Storm decision with many rulings on various issues in the District Court and now several decisions in the Court of Appeals. The Second Circuit's decision in Consub assures marine litigants that the practice of attaching EFT's will continue—unless Congress intervenes with legislative action. However, the decision in Consub also raises a question in footnote 1 about whether the Court will continue to allow Rule B attachments on money being transferred to a defendant, as opposed to money being sent by the defendant. We may not have to wait very long for a ruling on that issue because an appeal on that point has already been filed in Shipping Corporation of India Ltd. v. Jaldhi Overseas Pte Ltd., a case decided in the U.S District Court for the Southern District of New York on June 27, 2008."

Kirk Lyons, Esq.

LYONS & FLOOD, LLP

"The Second Circuit in Consub Delaware gave a resounding affirmation to the continuing vitality of Rule B attachments. In its decision, the Second Circuit rejected any notion that New York State law would have '... effect on the applicability of Rule B to funds involved in EFTs while they are in the hands of intermediary banks.' However, going forward, we see two potential issues created by the Consub Delaware decision. First, in footnote 1 (much like the footnote in Aqua Stoli), the Second Circuit laid the foundation for future challenges to Rule B attachments in circumstances where the beneficiary of the EFT is the defendant debtor.

Second, the appeal in Consub Delaware also challenged the use of Rule B where the contract contained an exclusive English jurisdiction clause. While the Second Circuit upheld the District Court's holding that there was nothing in the jurisdiction clause that specifically precluded the use of Rule B in New York, it is possible that, in the future, parties will seek to limit the availability of such pre-judgment remedies in their contract terms."

Peter Skoufalos, Esq.

BROWN GAVALAS & FROMM LLP

"With its recent decision in Consub Delaware LLC v. Schahin Engenharia Limitada, the Second Circuit reaffirmed Rule B's place in U.S. admiralty law as a potent tool for plaintiffs worldwide seeking to secure their maritime claims by capturing the transient assets of their breaching counterparties. The Court recognized that a defendant's assets in whatever form—including electronic funds transfers transiting New York banks—must be made available to satisfy judgments and arbitral awards in the future, when the defendant may be insolvent or operating as a different entity. As the district courts set about the task of interpreting Consub, we anticipate that Rule B will have continued vitality and that New York will remain the 'go-to' jurisdiction for securing maritime claims worldwide."

Owen Duffy, Esq.

CHALOS, O'CONNOR & DUFFY, LLP

"If Winter Storm had been overruled, the use of the Rule B procedure would have been severely limited to the rare instances where actual physical property of a maritime defendant could be found in New York. The Consub Court laid the issue to rest because the applicable rule of federal law continues to be that EFTs, to or from a party, are attachable as they pass through New York banks. No doubt, some aggrieved party will seek to rely on footnote 1 to carve out an exception, but I cannot see the Second Circuit being very receptive to another footnote based argument. Apart from that, however, there is still a great deal of fertile ground for litigation on Rule B issues because the Second Circuit has expressly stated the equitable grounds for vacatur are not necessarily limited to only the specific three grounds mentioned in Aqua Stoli. Thus, while the Consub decision is very welcomed by the admiralty bar in New York to the extent that it rules out the most serious challenge to Rule B practice, there are still a number of issues to be considered in any Rule B case and it is unlikely that the Consub case will be the final word on Rule B practice in New York.

Armand M. Paré, Esq.

NOURSE & BOWLES, LLP

"In its recent decision in Consub Delaware LLC v. Schahin Engenharia Limitada, the Court of Appeals for the Second Circuit rejected challenges made to maritime attachments of wire transfers at intermediary banks in New York under Rule B. Previous decisions of that Court had questioned the underpinnings of Rule B respecting attachments of such wire transfers. These questions seem largely to have been put to rest by the decision in Consub. Therefore, it seems that continued and perhaps even more widespread use of Rule B will occur in the future. This seems particularly so given the economic climate and declining commodity and shipping markets. It should be noted that there is some continuing question as to whether Rule B is available in a case in which the defendant is the recipient of a wire transfer (as opposed to being the sender). This question was left open in footnote 1 of that decision."

Patrick Lennon, Esq.

LENNON, MURPHY & LENNON, LLC

"Given the popularity of Rule B maritime attachment as a vehicle for securing, and in many cases quickly resolving, maritime disputes, it is doubtless that after the Consub decision there will be continued refinements regarding its scope and the circumstances under which it may be invoked. I predict there will be continued attempts to use Rule B to secure claims arising from shipbuilding and ship purchase and sale contracts, as well as commodity sales contracts involving ocean carriage provisions. One issue in particular that will likely be the focus of further decisions is whether Rule B may be used to attach funds being paid to a defendant ('beneficiary funds'), in addition to funds being paid by a defendant ('originator funds'). I predict that the Second Circuit Court of Appeals will ultimately hold beneficiary funds should continue to be the subject of Rule B attachment as there are a number of soundly reasoned district court decisions supporting that proposition. There are also several cases pending in the Second Circuit presently on whether a foreign company's registration alone makes it sufficiently 'present' to defeat a Rule B attachment. On this issue, I expect the Court of Appeals to rule that such a registration is sufficient to defeat Rule B attachment because it provides a clear-cut choice to a foreign defendant to either make itself amenable to jurisdiction in New York by registering, or suffer the consequences by not registering and having its funds attached via Rule B."

by: Ruben Del Rosario
Managing Partner, Del Rosario & Del Rosario
Manila, Philippines

CURRENT PRINCIPLES ON WORK-RELATION IN FILIPINO CREW CLAIMS

Filipino seafarers are governed by the Philippines Overseas Employment Agreement (POEA) Standard Employment Contract. Six years ago, the contract was amended to include a requirement that for the illness, injury or death to be compensated, it had to be "work-related."

This article examines the evolving case law on work-related issues under the amended POEA contract.

DURING THE TERM OF CONTRACT

In order to be compensable, the work-related illness, injury or death must occur during the term of the contract or, if occurring after the end of the contract, must have been caused by work on board the ship. The fixed-term contract begins at the place of hiring, usually Manila, and normally ends at the same place as the termination of hire.

To illustrate, the National Labor Relations Commission (NLRC) has ruled that the seafarer's death 17 days after the end of contract was not compensable. The seafarer failed to prove that his cerebrovascular disease (stroke), which occurred two days after repatriation, arose during the term of the contract.[1]

Similarly, the Supreme Court (SC) rejected a death compensation claim on the basis that the contract had been completed before the illness occurred. While seafarer's end-stage renal disease manifested itself one month after his repatriation, no compensation was awarded as the condition was contracted beyond the term of the contract, and he failed to prove that working conditions on board had increased the risk of contracting it.[2]

The SC reiterated said ruling involving two seafarers who likewise died of chronic renal failure four months and eight months (respectively) after repatriation. One actually finished his contract while the other served on board for only 28 days.[3]

The same principle was applied by the SC in two cancer cases where death occurred more than one year after termination of employment even though termination were both due to medical reasons.[4]

In another case, the Court of Appeals held that it was highly unlikely for a seafarer's kidney illness to have arisen during his employment. The seaman had been on board for only one month and he failed to prove that his illness was contracted during such short stint.[5] This should be distinguished from an NLRC ruling likewise involving renal disease that awarded disability compensation to a Master who has been employed with the same shipowner for 10 years.[6]

RECENT RULINGS

In a case involving urinary bladder cancer, the SC held that there was no work-relation as claimants were unable to establish that work exposed the seafarer to chemicals that are suspected to increase the risk of such cancer. Predisposition to develop cancer is affected not only by work but also through various factors outside of one's working environment. The Court went further by declaring that said type of cancer differs from "cancer of ephithelial lining of the bladder" (a listed occupational disease).[7]

Death due to HIV/AIDS was held not work-related by the Court of Appeals. Aside from finding willful concealment in the PEME, the Court resolved that HIV/AIDS:

a) Has no reasonable connection with the First Engineer's duties.

b) Is clearly not an occupational disease.

c) It was not shown that working condition increased the risk of contracting such dreaded disease.[8]

Stressing the "theory of increased risk," the SC likewise denied the claim of a seafarer who was repatriated due to an eye injury and subsequently died of stroke.[9] Seafarer failed to present proof that the eye injury increased the risk of the fatal stroke. In the same vein, death arising from myocardial infarction (heart attack) was denied compensation as it bears no relation

See notes on page 39.

to the cause of repatriation which was kidney stones.[10]

In a similar ruling, the NLRC declared that a seafarer's heart disease was congenital. Being a birth abnormality, it was impossible for the condition to have been aggravated during his normal course of employment as a cook.[11] Aneurysm associated with hypertension however was considered work-related by the Court of Appeals as seafarer (4th Engineer) was exposed to harsh working conditions, chemical irritants and dust aside from erratic working hours resulting in lack of sleep and rest which aggravated the ailment.[12]

In yet another case, the Court of Appeals found no causal relationship between a master's diverticulosis illness and his work on board the ship. As master, his duties related only to the supervision of the ship and crew. He had not been exposed to any risk that would have increased the chances of acquiring a disease associated with the digestive tract.[14]

Turning to injury cases, a seafarer who suffered serious injuries inflicted by a Russian mob during shore leave was held not entitled to compensation. Injury must arise out of and in the course of employment. In short, it must have causal connection between work assignment and the resulting injury. Interestingly, the NLRC rejected as absurd, seafarer's contention that all legitimate activities of seafarers even outside the vessel are to be considered work-related. On the other hand, another Division of the NLRC ruled that a seafarer who sunk and died in an ice-hole in Russia while returning to the vessel coming from a night club is compensable as the shore leave was duly approved by the Master, hence considered work-related.[15]

Meanwhile, death through stabbing was held not work-related as it was deceased seafarer himself who was found to have provoked the incident. His injury/death was attributable to his own unlawful aggression.[16]

PRE-EXISTING/CONCEALMENT

A seafarer is required to disclose in his PEME (pre-employment medical examination), or to his employer, any past medical condition, disability or history of illness. If the seafarer fails to do so despite full awareness of the condition at the material time, he will be disqualified from claiming any benefits.

Thus, the SC denied a seafarer's disability claim when he fraudulently misrepresented that he previously suffered from hypertension and coronary heart disability prior to joining the vessel.[17] However, in another case, the Supreme Court held that seafarer's misrepresentation cannot be the basis for denial of his medical benefits. An ailment (ulcer) contracted by a worker even prior to his employment, does not detract from the compensability of the disease. It is not required that the employment be the sole factor in the growth, development or acceleration of the illness. It is enough that the employment had contributed, even in a small measure, to the development of the disease.[18]

Equally held as pre-existing (hence deemed not contracted during the contract term) was a seafarer's arthritis and bone-related ailment as seafarer was noted to have been experiencing the symptoms thereof nine days prior to deployment. No wonder he was able to serve only for three weeks.[19]

OCCUPATIONAL DISEASE

Section 32-A of the POEA contract lists some 21 illnesses that are considered occupational diseases, provided that certain conditions are met. Illnesses not so listed may also be considered occupational since they are presumed to be work-related. However, the employer can dispute the presumption by presenting evidence that the illness is not work-related.

In one case, the NLRC ruled that the uterus myoma of a bar waitress in a cruise ship was presumed work-related. The disability claim was held to be compensable as the employer's submissions and evidence did not overcome the presumption.[20]

On the other hand, a chief engineer's diabetes was not considered work-related. The NLRC upheld the company doctor's opinion that diabetes is a familial, hereditary or genetic condition and employment circumstances are irrelevant. The seafarer may have been afflicted with the disease from childhood or in adulthood. Diabetes normally develops from many non work-connected factors such as family predisposition, genetic make-up, lifestyle and diet. Further, there was nothing in seafarer's duties that would have contributed to the development of diabetis.[21] There is a contrary finding by another Division of the NLRC reasoning that since diabetes is an illness of "unknown origin," there can be no determination of whether it is work-related or not. Hence, the presumption of work-relation was upheld.[22]

However, in one case, the Court of Appeals although recognizing thyroid cancer as not listed (hence presumed work-related), still required seafarer to show that employment aggravated said disease. Seafarer's bare assertion of "unusual strain of work" was declared insufficient to deserve compensation.[23]

CONCLUSION

Philippine courts have generally looked at the actual work performed by the seafarer, the working conditions, time element, type of illness or nature of injury, and other circumstances in determining work-relation and the compensability of disability or death claims. Courts have also examined whether claimants were able to prove that working conditions increased the risk of contracting the illness that resulted in disability or death. Unfortunately, based on recent decisions, it is difficult to predict how the courts will decide a particular case.

FD&D CORNER

by: Parker Harrison, Esq.
Senior Claims Executive and FD&D Manager,
and: George Tsimis, Esq.
Senior Vice President and Head of Claims
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SDNY BROADENS SCOPE OF MARITIME CONTRACT JURISDICTION

It has been a long-established principle in U.S. maritime law that contracts for the sale or purchase of a vessel do not come within the Court's maritime jurisdiction. Because Rule B attachments are only available for maritime claims, the buyer or seller of a vessel has not been able to avail itself of the Rule B mechanism to secure its claims. However, on October 2, 2008 in Kalafrana Shipping Ltd. V. Sea Gull Shipping Co., Ltd., 08 Civ. 5299 (SAS) (S.D.N.Y. Oct. 2, 2008), Judge Shira A. Scheindlin of the Southern District of New York sustained a Rule B attachment in connection with a dispute involving a contract for the sale of a vessel. This decision is significant because it broadens the long-recognized boundaries of federal admiralty jurisdiction that have, until now, excluded disputes involving brokerage contracts for chartering fixtures, vessel construction contracts, and vessel sale and purchase agreements.

In Kalafrana, disputes arose in connection with a vessel sale contract and, in particular, with respect to a portion of the agreement involving repairs to be done to the vessel. The dispute was arbitrated in London and led to the issuance of an Award in favor of the claimant. The claimant then obtained a Rule B attachment to enforce the award. In denying the motion to vacate, Judge Scheindlin recognized the traditional rule on maritime contracts and MOAs, but noted that recent U.S. Supreme Court decisions had eroded this principle. Judge Scheindlin also emphasized that the dispute involved a vessel that had already been operating on the sea and that involved repairs which were the subject of the sales contract. Accordingly, the fact that the vessel was already in operation was an important consideration and any future matters that will be seeking to piggy-back this holding will have to satisfy at least this criterion to sustain a Rule B attachment in the MOA context.

While other judges in the SDNY are not bound by this decision, it will undoubtedly be cited by future MOA litigants seeking security under Rule B. If this decision is appealed, it will be interesting to see whether this new rule withstands appellate scrutiny. Until that time, this decision will provide future litigants in MOA disputes with a mechanism to obtain pre-judgment or pre-award security by way of a Rule B attachment in New York. The Managers will continue to monitor the situation regarding this decision and we will keep the Membership advised in future issues of *CURRENTS* as to whether the Kalafrana decision and its principles holds up over time.

THE ACHILLEAS—CHARTERERS' LIABILITY FOR LATE RE-DELIVERY SETTLED AT LAST

In July, the English House of Lords invoked the principle of foreseeability to limit a charterer's liability for late redelivery. In Transfield Shipping Inc. v. Mercator Shipping Inc., [2008] UKHL 48, the vessel was fixed to Charterers at a daily rate of US$16,500. At the end of the charter period, Charterers gave notice that redelivery would occur between April 30 and May 2, 2004. By the time that the charter term expired on May 2, 2004, charter rates had skyrocketed to more than double the charter rate. Based on Charterers' redelivery notice, Owners arranged a follow-on fixture at a daily rate of US$39,500 and with a laycan of April 28 to May 8. On her final voyage, the vessel was delayed and missed the redelivery window. Owners were able to obtain an extension of the laycan under the follow-on charter, but at a reduced rate of only US$31,500, since the market had fallen somewhat since the follow-on charter was fixed. The vessel was finally redelivered, albeit nine days late.

Owners proceeded to arbitration seeking damages based on their loss of profit incurred over the full period of the follow-on charter—that is, US$8,000 per day for

192 days, or US$1,364,584.37. Charterers countered that Owners' damages were limited to the difference between the original charter rate and the market rate for the period of the overrun, or US$158,301, under the more traditional loss-of-use formula.

Owners prevailed in the arbitration proceeding and were awarded damages based on their loss of profits over the full length of the subsequent charter. Both the High Court and Court of Appeal rejected Charterers' appeal, but gave leave to appeal the matter to the House of Lords.

In July 2008, the House of Lords delivered a unanimous decision reversing the decisions of the arbitrators and both lower courts. In so doing, the House of Lords grounded its decision in the time-honored principles of foreseeability and remoteness that are the touchstones of damages for breach of contract in English law. Specifically, the Court confirmed that liability for damages is based on the parties' intentions at the time of contracting. The Court reasoned that, to arrive at the proper measure of damages, one must first determine whether the loss was the type of loss for which the breaching party can reasonably be understood to have assumed responsibility. Applying this principle to the facts of the case, the Court determined that at the time of contracting, Charterers had not assumed liability for the loss of the follow-on fixture, since they could have had no inkling of any details of that fixture, such as the daily rate, duration, or other details. So where a charterer redelivers the ship late, the owners are entitled to be paid for the period of overrun at the market rate, and not for their loss of profit on the following charter.

"ASBATANKVOY: CH-CH-CH-CHANGES—THEY'RE GONNA COST YOU!"

In Antiparos ENE v SK Shipping [2008] EWHC 1139 (Comm) (23 May 2008), the English Commercial Court considered whether Clause 4(c), Part II of the ASBATANKVOY form entitles Charterers to change ports after making their nomination. The vessel was chartered on ASBATANKVOY terms for a single voyage from the Arabian Gulf to South Korea or Japan to load "1/2/3SP(S) in AG" and discharge at up to two safe ports in the Korea/Japan range. Clause 4(a) of the charterparty form requires Charterers to name loading ports at least 24 hours prior to the vessel's readiness to sail from the prior discharge port, or from the bunkering port for the voyage, or upon signing the charter if the vessel has already sailed. Clause 4(c), in turn, provides that "[a]ny extra expense incurred in connection with any change in loading or discharging ports...shall be paid for by the Charterer and any time thereby lost to the Vessel shall count as used laytime."

On March 21, 2007, in accordance with Clause 4(a), Charterers nominated the load ports of Ras Laffan and Mina Al-Ahmadi, in response to which Owners arranged to bunker the vessel at the second load port for US$301 pmt and so notified Charterers. On March 23, Charterers first suggested that they might change the voyage instructions and on March 26 issued revised instructions for the vessel to load at Ras Laffan as originally advised, followed by Ras Tanura. Based on these revised instructions, Owners cancelled the Mina Al-Ahmadi bunker stem and arranged to bunker at Ras Tanura for US$355 pmt, the published price on the date of completion of delivery and US$217,721.52 more than the original bunker price.

Owners then brought a claim against Charterers under Clause 4(c) for the difference in price of the bunkers as originally arranged at Mina Al-Ahmadi and those actually supplied at Ras Tanura. In the alternative, Owners claimed the difference between the bunkers that they would have arranged at Fujairah had Charterers' revised nomination been given at the outset, and those actually supplied at Ras Tanura. Had Ras Tanura been named at the outset, Owners alleged, they would have bunkered at Fujairah at a price of only US$304, or US$205,626 less than actually paid at Ras Tanura.

Charterers denied liability, claiming, among other things, an implied right to change their original nomination under Clause 4(a). Failing that, Charterers argued that Clause 4(c) only encompasses deviation losses—that is, extra expense by way of fuel consumption and lost time incurred when the vessel is required to deviate from her course after she has already sailed for the named port. Finally, Charterers argued that, if Clause 4(c) did encompass the additional cost of bunkers, then Owners could only recover the lesser amount, or US$205,626.

The Court rejected each of Charterers' arguments, first finding that Clause 4(a) contained no implied right to amend voyage orders. The Court reasoned that,

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absent express wording, the parties could not have intended to confer such a right, particularly where the charter provides for multiple alternative port ranges that may be separated by considerable distance.

The Court next rejected Charterers' narrow interpretation of the types of losses that are compensable under Clause 4(c), ruling that that clause entitled Owners to recover for the difference between the expenses that would have been incurred without the change and those that were incurred because of the change.

Finally, the Court determined that Owners were entitled to recover the "extra expense" actually incurred in connection with the change of nomination, or US$217,721.52, rather than the lesser amount representing the difference between the expenses incurred and those that would have been incurred had the amended instructions been given in the first instance.

RIGHTSHIP APPROVAL—THE RIGHT WAY?

RightShip, the ship vetting organization originally established in 2001 to identify those vessels considered suitable and safe for the carriage of iron ore and coal cargoes, has grown to be all but industry standard for many dry-bulk shippers in Australia, Brazil, and certain other areas. As this program gained wider use, vessels that are not RightShip-approved face increasing difficulty finding employment in trades where shippers require such vetting, and disputes about this system are therefore becoming more common.

Where a charterparty does not address RightShip approval, problems are sure to arise if the vessel is unable to call at a terminal nominated by the charterers until such approval is obtained. The English High Court recently addressed just such a scenario in the case of The Silver Constellation, (Seagate Shipping v. Glencore International [2008] EWHC 1904 (Comm)), on appeal from a London arbitration award. In that case, although the charterparty did not expressly oblige Owners to obtain RightShip approval, it did require the vessel to possess "all certificates necessary to comply with current requirements of all ports of call," and to remain "in all respects eligible for trading to the ports, places or countries specified" in the charter. Significantly, the charter also included Clause 8 of the NYPE form requiring Owners to obey Charterers' orders for the vessel's employment.

The vessel had a 2-star RightShip rating up to February 2007, when she was 21 years old. After the Master completed a RightShip vetting questionnaire, at Charterers' request, for the contemplated carriage of a cargo of iron ore, RightShip requested an inspection of the ship. Owners refused, and the vessel's status was downgraded to a single star.

The parties proceeded to London arbitration to determine (1) whether Owners were obliged to secure RightShip approval by the contract terms, and/or (2) whether Clause 8 required Owners to permit the RightShip inspection arranged by Charterers. The arbitrators resolved both questions in Charterers' favor, construing the term "eligible" in the contract in the broadest sense. The panel may have been heavily swayed by evidence that RightShip approval is a commercial necessity for the ports to which the vessel was to call.

On appeal, the English High Court reversed the arbitral tribunal on the first issue, finding that the Owners' obligations with respect to certificates, documents, and records pertained to requirements imposed by the law of the flag, the countries, or the ports to which the vessel was to be directed. RightShip approval, in the Court's view, was merely a commercial requirement that was not legally necessary.

The Court agreed with the arbitrators on the second issue, however, finding that Owners' refusal to permit the RightShip inspection arranged by Charterers was a breach of NYPE Clause 8, on the basis that the refusal rendered the vessel unemployable on trades that were otherwise permissible under the charter's terms.

by: Muge Anber, Esq.
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POLLUTION FINES IN TURKISH WATERS

Turkey considers sea pollution emanating from ships as a major threat to its waterways, and especially the Turkish Straits system. Therefore, in Turkey the requirements of regulations concerning pollution caused by ships are very stringent. Fines are applied to tankers, ships and other sea-going vessels in cases where sea pollution is caused are set forth by the Environmental Act. The procedures for establishing sea pollution and the imposition of administrative fines are promulgated by the Regulation on Determination of Breaches and Imposition and Collection of Administrative Fines as per the Environmental Law (RDBCAF).*

* Published by the Official Gazette, edition 26482 dated 3 April 2007.

POLLUTION FINES IN TURKISH WATERS

Under RDBCAF, direct or indirect discharge of ballast, bilge water, or any kind of pollutant, is prohibited within Turkish territorial waters, free and exclusive economic zones, internal waterways, streams, lakes, canals etc. The regulation, however, does not detail the actions which cause pollution or count the types of pollutants. The liability of the pollutant is strict, that is regardless of culpability.

FINES IMPOSED ON THE VESSELS CAUSING SEA POLLUTION

The amount of the administrative fine is compounded pro rata based on the polluting vessel's gross registered tonnage (rather than the severity of pollution) and strictly imposed by the Council of Ministers.

As per Article 20 of the Environmental Act, as of January 1, 2008 fine amounts can be expected as follows:*

Petroleum and petroleum derivatives (crude oil, fuel, bilge, sludge, slop, refined product, oily waste etc.) discharged into sea by tankers:

GROSS REGISTERED TONNAGE	FINE AMOUNT PER GROSS TON
1,000 TON OR LESS	46.22 TRY
BETWEEN 1,000 AND 5,000 TON	11.55 TRY
5,000 TON OR MORE	1.14 TRY

Dirty ballast discharged into sea by tankers:

GROSS REGISTERED TONNAGE	FINE AMOUNT PER GROSS TON
1,000 TON OR LESS	34.66 TRY
BETWEEN 1,000 AND 5,000 TON	6.92 TRY
5,000 TON OR MORE	1.14 TRY

Petroleum derivatives (bilge, sludge, slop, fuel, oily waste etc.) or dirty ballast discharged into sea by ships or other sea-going vessels:

GROSS REGISTERED TONNAGE	FINE AMOUNT PER GROSS TON
1,000 TON OR LESS	23.11 TRY
BETWEEN 1,000 AND 5,000 TON	4.62 TRY
5,000 TON OR MORE	1.14 TRY

Solid wastes or domestic waste waters discharged into sea by tankers, ships or other sea-going vessels:

GROSS REGISTERED TONNAGE	FINE AMOUNT PER GROSS TON
1,000 TON OR LESS	11.55 TRY
BETWEEN 1,000 AND 5,000 TON	2.30 TRY
5,000 TON OR MORE	0.46 TRY

If the polluting vessel discharges any dangerous substances or disposals (defined as those which would have negative physical, chemical and/or biological effects on the local ecology) in to sea, the fine will be calculated 10 times the published rate for the category of petrol or petroleum products fines.

Pursuant to the Environmental Act, should a ship repeat the pollution offense within three years, for the second offense the fine amount will be doubled, and fines imposed for further offenses will be twice that amount again.

* Given numbers are valid up to and including 31 December 2008. Administrative fine amounts may be updated in January 1st, 2009 by new regulations.

According to the relevant provisions, the samples taken (from the polluted site and the pollutant vessel) by the authorized inspection teams should be analyzed in an authorized laboratory, and should be checked and controlled to determine whether they contain pollutants. An Administrative Sanction Decree may be taken only upon evaluation of laboratory test results, and other relevant documents (such as photographs/videos of the polluted site and the pollutant vessel; Memorandum of Facts).

Pursuant to the regulations, in order to impose the pollution fines, these conditions precedent must be met: (1) official authorities must establish that the substance dumped from the vessel into sea must be included in the list of pollutants (as listed hereto above, as per the Article 20); and (2) the substance discharged into sea must have been dumped in such a manner so as to cause harm to the environment and in a breach of the standards specified by the relevant regulations.

Notwithstanding, in practice, the official Authority issues its Administrative Sanction Decree before obtaining the analysis results, or even sending the samples to a laboratory. It is also of concern that the authorized laboratories, which analyze the samples, are not completely independent from the Authority that determines the amount of the penalty.

FINES MUST BE SETTLED BY CASH TO RELEASE THE VESSEL

The relevant Laws and Regulations are very strict. In order to allow the vessel to sail the fine must be settled. Even though the new regulations provide that certain types of guarantees, such as Bank Guarantees or Club Letters of Undertaking, would be acceptable to secure the shipowner's obligation to pay the fines, in practice, immediate cash payment of the fine still seems to be the only way of getting clearance to depart. The delay in payment of the fines extends the vessel's detention time by the official authorities.

If the fine is paid within 30 days of notification of the Administrative Sanction Decree, the shipowner may realize a benefit of 25% reduction off the total fine amount. In order to receive this reduction, we suggest our Members ensure settlement of the pollution fines within the specified period.

CHALLENGING THE FINES MAY NOT BE FEASIBLE

Payment of the fine is mandatory, but does not waive the shipowners' rights to appeal the legal proceedings against the penalty decree. Commencing an action against the penalty will not stop the Authorities from collecting the fines.

The pollution fines are appealable before the competent Administrative Court within 30 days from the notification of Administrative Sanction Decree issued by the Administrative Authority. However, the chance of success is very small in cases where the pollution is observed or established by the Authority. Also, even if the appeal concludes in the shipowner's favor, a possible reimbursement will be made in Turkish Liras, without any interest. Furthermore, in order to collect the monies upon a successful appeal, the shipowner will have to initiate a separate action against the Authority. This judicial process to recover the fines paid by the shipowner could last for one or two years and the nominal amount reimbursed would be considerably devalued in the interim. Therefore, many times (i.e., when pollution is evident or the recoverable amount is minimal) appeal is not advisable to pursue.

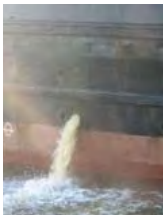
Fines imposed on domestic and international tonnage:

YEARS	THE NUMBER OF THE VESSELS FINE IMPOSED		TOTAL
	TURKISH	*FOREIGN*	
1997	22	44	66
1998	11	39	50
1999	17	36	53
2000	12	33	45
2001	15	26	41
2002	11	11	22
2003	17	24	41
2004	21	33	54
2005	22	38	60
2006	63	106	169
2007	79	259	338

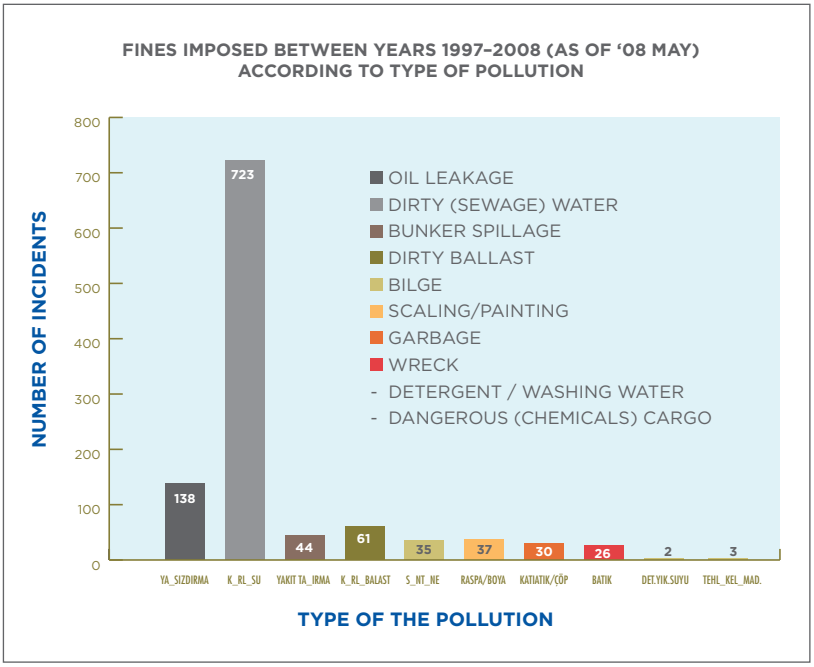
These figures have been published by the Istanbul Metropolitan Municipality Environmental Protection Management's "Vessels Sea Pollution Fine Report" covering the years 1997-2007. It is noted that the number of the vessels fined has significantly increased over the last ten years.

The following chart shows the total amount of fines, charged the vessels which were found polluting sea during inspections:

YEARS	NUMBER OF VESSELS	TOTAL AMOUNT OF FINES IMPOSED (TRY)
2000	45	1,285,168.95
2001	41	1,771,739.65
2002	22	1,502,153.33
2003	41	3,981,647.03
2004	54	4,519,188.79
2005	60	1,255,195.66
2006	169	3,038,435.10
2007 OCT.	281	8,350,533.84



RECORD-BREAKING FINE
Istanbul Metropolitan Municipality Environment Protection authorities fined the Marshall Islands flagged MV Cape Elizabeth at record-breaking amounts of 872,684.90 TRY, as she was found disposing dangerous chemical materials into the sea in the off-shores of Yesilkoy. Oct 23, 2007.



Out of the 723 fines imposed for dirty (sewage) water discharge, 168 fines surprisingly pertain to year 2008. Comparing to 2007's chart, the number of the fines imposed due to oil leakage off the vessels increased by 13 fines in 2008.

MEASURES TO PREVENT THE FINES

The vessels' agents, upon their nomination, often notify the shipowners or the masters of the vessels transiting or waiting at anchorage or calling at Turkish Ports, especially prior to the vessels' entering Canakkale (Dardanelles) Straits, that the masters should take precautions not to cause any pollution incident.

We have seen various incidents where the fines were imposed but the vessels did not indeed discharge polluting substance (listed by the regulations); for instance, washing accommodation decks and windows with sea water, discharging through the cooling seawater outlet, grey water discharge, etc. In order to avoid the fines, masters of the vessels must pay utmost attention and take all steps not to cause any pollution by leakage or spillage of any kind of materials (i.e., paintings, oil, bilges, clean ballast, dirty ballast, all kind of residues, garbage, dirty waters, sewage waters, laundry waters with detergent, lavatory soap waters, shower waters, dust, rust etc.). Ship's crews must be reminded what not to do while in Turkish waters and must be advised against spilling any water, either clear or dirty, over the ship's side.

We have been notified of the considerable increase of the number of the vessels charged with pollution fines at the Shipyard region Tuzla, Istanbul; i.e., in 2007 about 190 vessels had been fined. Hence, it would be the shipowner's benefit to agree on a clause to be inserted in the Job Agreement with the shipyard for the vessel's repairs, where the shipyard will bear liability for any pollution incident and subsequent fines imposed against the vessel under the shipyards control.

Author's Note: I would like to thank Dr. Haci Kara of Kara& Ulutas Law Office, Istanbul and our Correspondents Vitsan Mumessillik ve Musavirlik A.S. and Omur Marine Ltd. for their assistance in preparation of this article.

CORRESPONDENT PROFILE

LEGAL CORRESPONDENTS IN PANAMA: DE CASTRO & ROBLES

Given the strategic location of Panama, the existence of the Canal, the trans-isthmian railway, the approximately 8,000 vessels flying the Panamanian flag worldwide and major container terminals at both entrances of the Canal, Panama's highly developed maritime services industry comes as no surprise. From the geographical centre of America, the law firm of De Castro & Robles provides its services to the international maritime and shipping industry.

The firm was established in Panama City in 1956 by Woodrow de Castro and David Robles. During its first 20 years of existence the firm practiced actively before the United States District Court for the Canal Zone with emphasis on admiralty and maritime matters, involving claims and litigation against the Panama Canal Company as operator of the Panama Canal and the port terminals located at the Atlantic and Pacific entrances.

Upon entry into force of the 1977 Treaty between Panama and the United States of America, the above-mentioned Court was disestablished. Prior to that occurrence, a Presidential Commission was established, presided over by Mr. De Castro and of which Mr. Robles was also a member, to draft a Code of Maritime Procedure for Panama. After 18 months of work, the draft legislation proposed by the Commission was enacted into Law 8 of 1982, creating Panama's Maritime Courts and Code of Procedure, which replaced the U.S. Federal Court which had exercised exclusive admiralty and maritime jurisdiction since the opening of the Panama Canal.

The Panamanian Maritime Courts were the first established in Latin America, and have jurisdiction to hear and decide not only cases having points of contact with Panama, but also claims originating in other countries when same are brought in rem against the vessel or cargo,

or in personam and the vessel or other property of the defendant is arrested in Panama to found jurisdiction.

The types of claims encompass all sorts of marine-related casualties, from cargo claims, salvage, personal injuries, labor compensation and collisions, to charter party and bunker quality disputes. Over the years, the nature of the claims seem to have varied according to international tendencies, for example, during the 1990's there was a proliferation of personal injury and labor claims brought by Filipino seafarers or their surviving relatives following decisions whereby U.S. Courts refused to entertain these cases. After litigation and appeals to the Supreme Court we were able to persuade the Court to decline these cases in favour of Philippine Courts. Later on, as agricultural exports from Latin America to Europe and the United States increased, a large number of claims were lodged before local maritime courts, seeking compensation for alleged delays during carriage, temperature fluctuations, deviations, and other situations which resulted, according to claimants, in the over ripening or damage to cargo. These cases have been litigated through all stages up to the Supreme Court, in general with good results for the carriers.

As De Castro & Robles expanded its activities, additional partners joined the firm, which is now composed of four partners: David Robles, Gabriel R. Sosa III, Eduardo Real and Alberto Lopez Tom, and a team of highly capable associates, paralegals and support staff, which have made De Castro & Robles the oldest and perhaps the largest firm specializing in Admiralty and Maritime litigation in Panama.

In keeping up with industry's requirements, two of the firm's partners are graduates of the U.S. Merchant Marine Academy and licensed deck officers, three are admitted to practice in the United States, and most of the attorneys have academic and postgraduate background from top universities in the United States and Europe.

Their large involvement in maritime and admiralty law also encompasses claims against the Panama Canal Authority on behalf of owners and underwriters, flowing from damages sustained by vessels, persons or cargo while transiting the Canal, as well as the investigation of marine casualties, pre-judicial securing of evidence on board vessels, attendance with cargo or H&M surveyors, etc. Given that most casualties occurring at the Panama Canal are related to navigation, knowledge and experience have proven to be key factors.

De Castro & Robles maritime services also encompass registration of vessels under the Panamanian flag, vessel financing and registration of mortgages, which over the years has grown to become a significant part of their practice. In fact, one of the firm's partners, Eduardo Real, is currently on leave serving as Panamanian Ambassador and Merchant Marine Consul in Singapore, and one of

CONTINUED FROM PAGE 37

the firm's associates, Migdalia Jaen, is also on leave acting as Deputy Director of the Seafarer's Directorate of the Panama Maritime Authority.

Recently, their attorneys participated, through the Panama Maritime Law Association, in the drafting commissions that resulted in three (3) recently enacted laws, the first of them completely replacing the entire section of Panama's Code of Commerce dealing with maritime commerce, and which dated back to 1917; the second law, Law No. 56 of August 6th, 2008 created a regulatory legal frame for port operators and services rendered therein or in connection with the port; and the third, Law no. 57 of August 6th, 2008 restructures and modernizes Panama's Ship Registry. Additionally, a project of law which updates the Code of Maritime Procedure is pending approval before the National Congress. The amended Code will make legal proceedings faster and more effective.

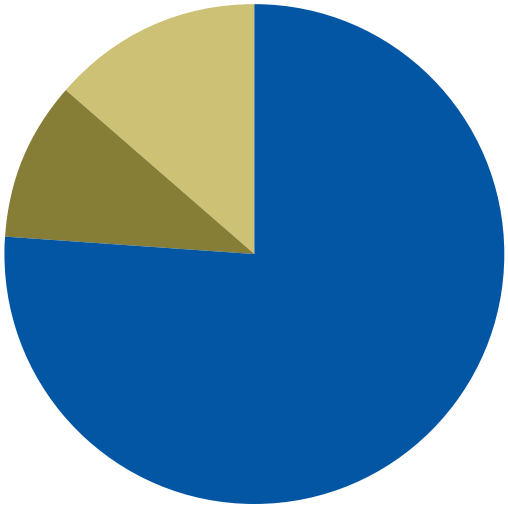
The above legislation updates Panama's legal structure in the maritime sector, allowing the registration of vessels online, creating a more stable legal environment for port operators, in addition to include several topics which have been gaining significant relevance, among them environmental pollution, which could well be the next trend of cases in their maritime courts. Their firm is currently defending claims in excess of two billion U.S. dollars (US$2Bn) for alleged damages resulting from spills and marine pollution. This ranges from administrative proceedings and fines imposed by the Panama Canal Authority, Panama Maritime Administration and the National Environmental Authority of Panama, to legal proceedings brought before local maritime and civil courts.

Over the years the firm expanded its activities to meet the needs of its diverse clientele. Today areas of practice include, in addition to Admiralty and Maritime Law, Business and Corporate Law, Asset Protection & Estate Planning, Real Estate, Immigration Law, Labor Law, Civil Litigation, Telecommunications, Mediation and Arbitration, among others.

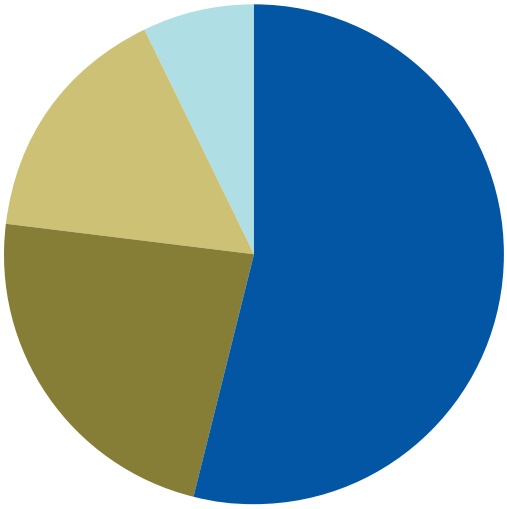
De Castro & Robles also devotes part of its efforts to corporate social responsibility programs, actively sponsoring a fully geared library and multi-media study center for elementary school kids in one of Panama's underprivileged neighborhoods, summer football and basketball leagues for young kids and pro bono work. In early 1991, Mr. Robles was decorated by Her Majesty's Government as an Honorary Officer of the Order of the British Empire for his having acted as honorary counsel to the British Embassy in Panama for over 30 years.

With an ample network of correspondent firms in Europe, the United States, Latin America and other parts of the world, De Castro & Robles is also in a position to provide legal assistance in a wide variety of jurisdictions, and is often contacted by clients seeking its assistance in matters outside of Panama; mostly in Central and South America. With 52 years of service, De Castro & Robles provides a high quality legal service at the speed required by modern days and international trade.

ALL CLASS GT BREAKDOWN



- 74% Europe (205)
- 10% Asia (203)
- 13% North America (207)



- 54% Bulk Carriers
- 23% Tankers
- 16% General Cargo/Containers Passenger/Ro-Ro
- 7% Tugs/Barges/Small Craft

NOTES FOR **CURRENT PRINCIPLES ON WORK-RELATION IN FILIPINO CREW CLAIMS**, P 28-29

[1] Annabelle Cabahug, et. al. vs. Southfield Agencies, Inc., NLRC OFW CN. 04-04-01095-00, CA No. 045283-05

[2] Lourdes Rivera vs. Wallem Maritime Services, Inc., G.R. No. 160315, November 11, 2005

[3] Zosimo Rosario vs. Denklav Marine Services, et. al., G.R. No. 166906, March 16, 2005; Gau Sheng Phils., Inc., et al., vs. Estrella Joaquin, G.R. No. 144665, September 8, 2004

[4] Prudential Shipping and Management Corp., et. al. vs. Emerlinda Sta. Rita et. al., G.R. No. 166580, February 8, 2007; Klaveness Maritime Agency Inc., et. al. vs. Beneficiaries of the late Second Officer Anthony Allas, G.R. No. 168560, January 28, 2008

[5] Trans-Global Maritime Agency, Inc., et. al. vs. NLRC, et. al., CA-G.R. SP No. 91393, February 10, 2006

[6] Justiniano Oloteo Jr. vs. Klaveness Maritime Agency, Inc., et. al., NLRC OFW Case No. (M) 01-06-1062-00), December 17, 2003

[7] Klaveness Maritime Agency, Inc. et. al. vs. Beneficiaries of the late Second Officer Anthony Allas, G.R. No. 168560, January 28, 2008

[8] Leonis Navigation et. al. vs. NLRC, et. al., CA-G.R. SP No. 98719, October 17, 2007

[9] Spouses Aya-Ay vs. Arpaphil Shipping Corp., et. al., G.R. No. 155359, January 31, 2006

[10] Leonoras vs. Equatorial Shipping and Shipmangement Co. Inc., et al., NLRC NCR OFW (M) 99-09-1623, December 29, 2003

[11] Guntan vs. Philippine Transmarine Carriers, et. al., NLRC CN. (M) 02-04-0865-00, CA No. 036669-03, December 17, 2003

[12] Pacific Asia Overseas Shipping Corp. and/or Arab Maritime Petroleum Transport vs. NLRC, et. al., CA-G.R. SP No. 95370, February 19, 2007

[13] Paul Go vs. NLRC, et. al., CA-G.R. SP No. 93068, May 29, 2007

[14] Vigil vs. Aqualink Maritime, et. al., NLRC NCR CN. OFW (M) 03-10-2675-00; CA No. 041526-04, July 29, 2005

[15] Amy Torre vs. German Marine Agencies, Inc., et. al., CA No. 048750-06; NCR-04-08-02313-00

[16] Susan Mariano, et. al. vs. NLRC, et. al., CA-G.R. SP No. 97038, October 9, 2007

[17] OSM Shipping Phils., Inc. vs. Antonia Dela Cruz, G.R. No. 159146, January 28, 2005

[18] Joel De Jesus vs. NLRC, et. al., G.R. No. 151158, August 17, 2007

[19] NYK-FIL Ship Management, Inc., et. al. vs. NLRC, et. al., G.R. No. 161104, September 27, 2006

[20] Rachel Lucas vs. Magsaysay Maritime, et. al., NLRC NCR 03-04-0979-00, CA No. 041854-04, August 12, 2004

[21] Loreto Mendoza vs. Ventis Maritime, et. al., NLRC NCR Case No. OF2-(M)-04-05-01224-00

[22] Rodolfo Cañosa vs. Hammonia Marine Services, Inc., et. al., NLRC NCR OFW CN. (M)02-03-0736-00, CA No. 038522-03, March 31, 2004

[23] Apolinario Corpuz vs. NLRC, et. al., CA-G.R. SP No. 84665, February 21, 2005

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