

CURRENTS





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Management Changes

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

New York

Charles J. Cuccia	- Corporate Compliance
Parker Harrison	- Claims Executive
Gina Kim	- Reception
Matthew S. Miller	- Claims Executive
Tammy M. Van Dunk	- Accounting
Philip J. Worsdale	- Claims Executive

Greece

Despina Beveratou	- Claims Executive
Myrto Anghelakis	- Claims Executive
Panos Sarangelis	- Administration

Shanghai

Annie Chan	- Administration Manager
Yelin Tang	- Office Assistant

The cover and other assorted illustrations in this issue were illustrated by Mr. John Steventon
 Edited by Dr. William H. Moore

Introduction

Plus ça change, plus c'est la même chose. The more things change, the more they are the same! Or are they? This is a question worth examining as another P&I renewal season has come and gone.

The business of each renewal – and the emotional responses sometimes provoked! – is little changed in substance from that of a generation ago. The use of technology is, of course, much more sophisticated and pervasive than it was, say, in the late 1970's, but the underlying tempo and elemental instincts of the process remain much the same.

In responding to a challenging business climate, the American Club has sought to husband its skill sets in a manner aimed at achieving the optimum relationship between insurance pricing, the conditions upon which cover is supplied and prospective risk.

This has entailed a broad deployment of all the resources at the Club's disposal to support the efforts of its underwriters. We are encouraged to believe that the American Club's current and future underwriting results bear witness to, and will continue to inform, the success of this strategy.

The need to adopt a holistic approach to the provision of P&I has never been greater. In as much as the renewal process of the early twenty-first century continues to exhibit patterns similar to that of earlier years, the industry background against which recent renewals have been accomplished is very different.

The continuing buoyancy of the freight markets – as yet unaffected by fears of a US-led global recession – together with inexorably rising commodity prices and a hostile claims and regulatory climate, do not augur well for the short-term diminution of P&I exposures.

On the contrary, there has been much comment recently on the growth of larger claims, particularly those affecting the International Group Pool, but claims have also been rising at an underlying level. The Club's Annual Report and Accounts, to be published over the next few weeks, will examine these trends in detail. In this context, the often-used expression "paradigm shift" has sometimes been employed to characterize these changing trends within the industry.

This implies that the need for the American Club – indeed, for any P&I provider – to supply unprecedented levels of Member service has never been greater. The Club remains confident that it can meet the challenges of the future, committed to the provision of peerless service delivered in a sympathetic, cost-effective and energetic manner.

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



The P&I world as rugby scrum-- American Club management prepares to engage powerful contrarian forces.

Training is the Key to Good Classification Society Performance

*by Claude Maillot
Director, Ships in Service Division
Bureau Veritas, Paris, France*

INTENSIVE training, repeated and reinforced regularly, is the key to enhancing the performance of surveyors and inspectors. Bureau Veritas Marine Division oversees the work of over one thousand and the parent group, Bureau Veritas (BV), employs more than 30,000 persons at over 550 offices world wide.

As the very largest certification, classification and verification group in the world, BV also face the challenge of raising and maintaining high standards across the world's largest and globally most diverse network.

Over the last few years we have dedicated major resources to completely revamping our training system, and we developed a system of training for surveyors drawn from the high standards of the nuclear industry.

Training of Bureau Veritas marine surveyors is actually conceived as an integral component of the production processes which are put in operation during the ship inspections. It is on a par with the mastering of the production tools by the surveyor, and conversely the tools bring the relevant KPIs and experience feedback, which allow the content of the training to be continually enriched and maintained up to date. Training is thus genuinely a key process in the improvement process of the whole society's performances.

This is the reason why BV updates its training content annually and makes a requirement for each surveyor to undergo an annual training session and be refreshed on rule evolution and experience feed back from the past year of operations and to practice the new information and production tools that he will use in the carriage of his duties.

Because training is embedded to production and a leading component of the Quality Plan, the training content is prepared in the Head Office by the senior staff of the operational departments directly in charge of the monitoring of the surveyors and survey operations, the knowledge management departments, who prepare the rule evolution and the technical instructions to surveyors, as well as the IT development team who designs the tools so as to facilitate rule understanding implementation.

Training at BV is therefore drawing directly from the experience feed back, rule evolution monitoring and activity management review.

The training content is delivered to new hires through computer assisted means composed of 40 modules on CD-ROMs and during initial training sessions in dedicated Regional Training Centres. Additionally, as already mentioned, every surveyor attends a compulsory annual training seminar.

The training courses prepared by head office are actually given by the senior surveyors who have the management responsibility of the surveys and surveyors in their geographical area, and who are themselves trained annually for that purpose. The individual training needs are defined taking into consideration the type of surveys and the type of ships that the surveyor will be in charge of. This involves both theoretical and practical training, and will typically last between 6 months and one year. The surveyor is then examined and gets the qualifications for which he has demonstrated the required level of proficiency. His personal qualifications are linked to the production tools and the system forbids him to carry out the job on his own if he does not hold the required qualification for the considered survey(s).

How to ascertain, though, that the training which has been given delivers the required quality on board the vessel? This is actually done through the monitoring of the surveyor's activity and automatic KPI generating facilities which are embedded to the reporting tools. Thanks to this, "vertical" retraining may be decided, or in the case of "horizontal" findings, a modification of the training programme may then be triggered.

In the case of new and complex regulations to be implemented, it must be ascertained that they are understood by everybody. We have implemented

systems which allow “concentrated inspection campaigns” to be done on board the vessels. The results of these campaigns are analysed to confirm the adequacy of the training and instructions, or else to take appropriate actions.

The Bureau Veritas training system is thus devised so as to have the best surveyors and ensure that each and every one is upgraded and kept focused at the top level, giving them and the maritime community the permanent assurance that they can assess any situation and ship correctly. We have chosen to take a holistic approach, gathering men and tools into the same production process, and checking onboard the vessels that the expected quality level from training is actually achieved.” [↗](#)



New Regulations on Crew and Manning Agency of the People's Republic of China

*by Raymond Sun
Director - Chief Representative
SCB Management Consulting Services, Ltd.
Exclusive Correspondents to the American Club
Shanghai, PRC*

Chinese Seafarers and the law

According to the Ministry of Communications of China, China has the most populous crew force in the world. As at the end of 2006, there were 1.5 million crew working onboard vessels, out of which 510,000 on sea-going vessels.

In spite of the large number of the seafarers, there is no unified national law. The main shipping laws, i.e. the Maritime Code of PRC and Maritime Traffic Safety Law, focus on the general safety of vessels and competency of seafarers, but hardly anything on the rights of the seafarers.

Article 34 of the Maritime Code says: "In the absence of specific stipulations in this Code as regards the employment of the crew as well as their labor-related rights and obligations, the provisions of the relevant laws and administrative rules and regulations shall apply." This is too general and difficult to follow. One has to look into international conventions adopted by China (such as the ILO conventions and IMO conventions), the departmental regulations by the Ministry of Labour and Ministry of Communications, or other local governmental policies to find out what benefits the crew may have. This is of course not friendly to the seafarers.

Furthermore, the Maritime Code applies only to ocean going vessels and crew onboard river vessels are not covered by it.

The Crewmembers' Regulations of the People's Republic of China

The Crewmembers' Regulations of the People's Republic of China ("CR") is the latest regulation that

makes specific stipulation on the benefits or rights of the seafarers. It was promulgated by the State Council and is thus a national regulation, second only to those endorsed by the National People's Congress (such as the Maritime Code and Maritime Traffic Safety Law).

CR came into force on September 1st 2007. It has 73 Articles in 8 Chapters.

Chapter 1 General Principles

Chapter 2 Crew Registration and Qualification

Chapter 3 Duties of the Crew

Chapter 4 Protection of Crew.

Chapter 5 Crew Training and Services

Chapter 6 Supervision and Examination

Chapter 7 Legal Liability

Chapter 8 Supplementary Provisions

The Protection of Crew

Chapter 4 (Articles 25 to 34) is the main chapter dealing with crew benefits and protection. There are

Article 25: The employer and crew should have work-injury insurance, medical insurance, pension, unemployment and other social insurance as laid out by relevant national stipulations. This is the first national regulation in which compulsory insurance for seafarers is introduced. The requirement is wider than the normal P&I coverage and includes unemployment and social insurance.

However, there is lack of reference what these national stipulations are and there is no provisions the level of the insurance. Presumably these should follow those for the shore-based employees, who will get the Four Types of Social Benefits: housing fund, pension, unemployment and medical insurance. The rate is 44% of the salary. This will be quite a burden on Owners/employers.

Article 25 further requires the employer to provide special life and medical insurance for those crew on vessels trading to war-zone or quarantine area, or carrying noxious or harmful substances.

Article 29 does not permit deduction from crew salaries but there are exceptions: those provided by law or contract; income tax; social insurance expenses payable by the crew etc.

Article 31 permits a crew to request for repatriation if the vessel sails to war-zone or quarantine area without the crew's consent.

Article 72 (of Chapter 8) is a supplementary provision saying that in addition to the stipulations of the CR, the employer and crew members should abide the laws and regulations in relation to labour and social benefits.


Manning Agency

Chapter 5 is about crew training and servicing. The Regulation allows crew servicing agency but stipulates that it has to be a PRC legal person, with the management having 2 or more persons with the qualifications of senior officers.

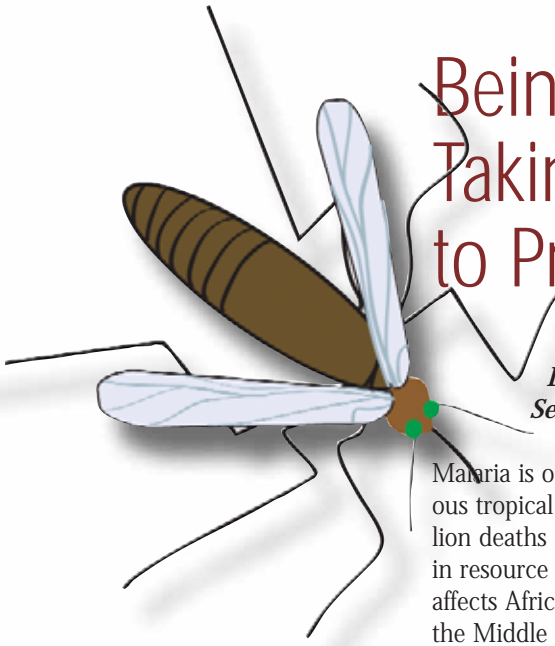
Application of the CR

The Regulation applies to all the crew registered in PRC (Article 2), including crew on river vessels. It uses the word "crew" instead of "seafarer" or "seaman". It also applies to foreign crew working onboard Chinese vessels in which case work permits have to be obtained beforehand.

Implication on crew / insurance

1. The CR makes crew insurance compulsory. For long, there is hardly any insurance for crew in river and some domestic seagoing trades. With the introduction of the CR, the employers will have to arrange for crew insurance for those vessels trading domestically.
2. The CR does not however affect much of the crew onboard seagoing vessels or their employers. This is because those seagoing vessels normally have P&I insurance covering crew injury, illness and related costs. 





Being Aware and Taking Precautions to Prevent Malaria

by *Rob Verbist, M.D.*
Director Mediport Maritime Medical Service Antwerp, Belgium

Malaria is one of the world's most common and serious tropical diseases. Malaria causes at least 1 million deaths every year, the majority of which occur in resource poor countries. Malaria predominantly affects Africa, south and central America, Asia, and the Middle East. The heaviest burden is in Africa, where around 90% of deaths from malaria worldwide occur each year.

Nevertheless more than 1/3 of clinical malaria cases occur in Asia and 3% occur in the Americas.

Non-immune travellers such as seafarers are at a substantial risk of acquiring dangerous "falciparum" malaria. Each year as many as 30,000 travellers fall ill with the disease.

Malaria is also a maritime problem

Seafarers must be made aware of the risks of malaria while employed. Those that contract the disease are not educated and aware of the risks. Generally the problems are:

- too many seafarers are unaware that malaria is serious and potentially fatal;
- the real risk for seafarers is often miscalculated;
- seafarers are not familiar with the signs and symptoms of malaria; and
- seafarers do not protect against malaria sufficiently and do not take appropriate protective medication.

Malaria - the disease

Malaria is transmitted by mosquitoes. The malaria parasites travel through the bloodstream to the liver to grow and develop. They leave the liver and enter the bloodstream again to invade the red blood cells, finish growing, and begin to multiply quickly. The number of parasites increases until the red blood cells burst, releasing thousands of parasites into the blood. The parasites then attack other red blood cells, and the cycle of infection continues, causing the common signs and symptoms of malaria.

Malaria - symptoms

The symptoms of the most life-threatening type of malaria are usually experienced between one week and two months after infection. Symptoms are flu-like and include fever (often exceeding 40°C), chills, malaise, nausea and vomiting, fatigue, myalgia (muscle pain), headaches, and sweating. A typical attack lasts 8-12 hours.

Three successive stages may be observed: (1) cold stage; (2) hot stage; and (3) sweat stage. These stages are often NOT observed in the life-threatening "falciparum" malaria. A patient with severe falciparum malaria may present with confusion, drowsiness, extreme weakness and may develop cerebral malaria with convulsions, an unrousable coma and rapid death.

Be aware of the risk

Review all the ports to be visited, and check the malaria risk. Compare the overall risk in a country with the risk at the coast and where possible in the individual port. The risk is influenced by:

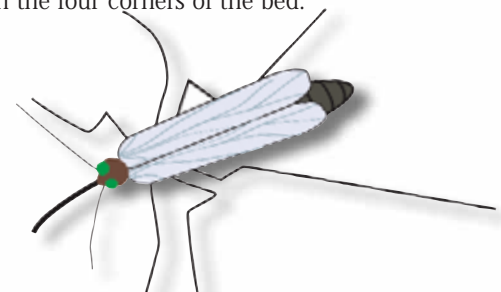
- seafarers staying onboard, at anchor, or taking shore leave;
- seafarers signing off, travelling inland, or joining the ship in that port; and
- the duration of stay, daytime or also at dusk or dawn (with higher risk).

What should seafarers do to avoid being bitten?

Within 2 miles of a malaria shore it is important that:

- doors and windows are kept closed after dusk;
- any mosquitoes entering compartments are killed;
- insect spray is used, also under tables and chairs and in dark corners;
- long sleeved shirts and trousers are worn;
- pools of stagnant water, dew or rain are removed;
- refuse bags and bins are sealed properly;
- portholes, ventilation and other openings are covered with fine wire mesh; and
- lights are screened to avoid attracting mosquitoes.

The mosquitoes are most active in low light hours after dusk and prior to dawn. Air conditioning helps to keep the mosquitoes away, it is important that it is left on all day. While sleeping, use undamaged impregnated mosquito nets, put under the mattress, fixed on the four corners of the bed.



Be disciplined about taking anti-malarial drugs

When a ship is bound for a malaria port, in addition to taking all possible measures to prevent mosquito bites, medication has to be given to the whole crew systematically. Preventative medication, combined with other measures against mosquitoes, strongly reduces the chance of disease, if taken correctly.

Most medication is taken for a set period before entering a malaria zone, continued while you are in a malaria zone and for a set period after leaving. Resistance of the parasite against some kinds of malaria medication exists and is high in several regions. The World Health Organisation (WHO) advises on the type of prevention to be used in a particular region (www.who.int).

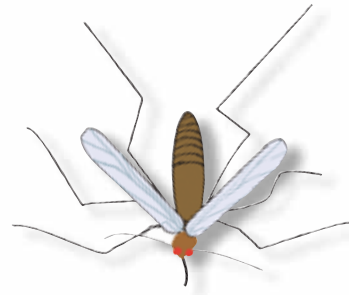
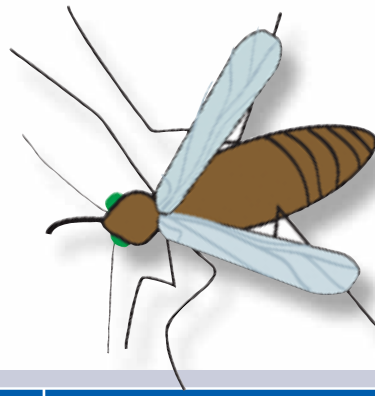


TABLE 1

MALARIA RISK		TYPE OF PREVENTION
Type I	Very limited risk of malaria transmission	Mosquito bite prevention only
Type II	Risk of P.vivax malaria or fully chloroquine-sensitive P. falciparum only	Mosquito bite prevention plus chloroquine chemoprophylaxis
Type III	Risk of Malaria transmission and emerging chloroquine resistance	Mosquito bite prevention plus chloroquine+proguanil chemoprophylaxis
Type IV	High risk of falciparum malaria plus drug resistance, or moderate/low risk falciparum malaria but high drug resistance	Mosquito bite prevention plus either atovaquone/proguanil, doxycycline or mefloquine, (take one that no resistance is reported for in the specific areas to be visited)

For more details see SHIP "Guidelines for Malaria Prevention Onboard Merchant Ships"

TABLE 2

Preventative treatment recommended per country, specific for seafarers.

() *Type of Prevention between brackets = in many areas seafarers may drop their chemoprophylaxis after a detailed discussion of their itinerary with a specialist doctor and careful evaluation of the malaria risk in relation to shipping, on condition that strict anti-mosquito measures are taken from sunset to sunrise and that malaria emergency treatment and full instructions are on hand.*

Countries in BOLD have ports	Type of Prevention	*
EAST EUROPE		
ARMENA	I	*
AZERBAIJAN	none (I)	*
GEORGIA	I	*
KYRGYZSTAN	I	*
TAJIKISTAN	III	*
TURKMENISTAN	none (I)	*
UZBEKISTAN	I	*

Countries in BOLD have ports	Type of Prevention	*
MIDDLE EAST		
IRAN	none (II) (IV)	*
AZERBAIJAN	none (II)	*
OMAN	none	
SAUDI ARABIA	none (IV)	*
SYRIAN ARAB REPUBLIC	none (I)	*
TURKEY	none (II)	*
YEMEN	IV	*

*more details see SHIP Guidelines for Malaria Prevention Onboard Merchant Ships

Countries in BOLD have ports	Type of Prevention	*
NORTH AFRICA		
ALGERIA	none (I)	*
EGYPT	none	
MOROCCO	none (I)	*
CENTRAL AFRICA		
ANGOLA	IV	
CAMEROON	IV	
CENTRAL AFRICAN REPUBLIC	IV	
CHAD	IV	
CONGO	IV	
DEMOCRATIC REPUBLIC OF THE CONGO	IV	
EQUATORIAL GUINA	IV	
GABON	IV	
SUDAN	IV	
ZAMBIA	IV	
EAST AFRICA		
BURUNDI	IV	
COMOROS	IV	
DJIBOUTI	IV	
ERITREA	IV	*
ETHIOPIA	IV	
KENYA	IV	
MADAGASCAR	IV	
MALAWI	IV	
MAURITIUS	none	
MAYOTTE, (FRENCH TERRITORIAL COLLECTIVITY)	IV	
MOZAMBIQUE	IV	
RWANDA	IV	
SOMALIA	IV	
TANZANIA	IV	
UGANDA	IV	
SOUTH AFRICA		
BOTSWANA	IV	
NAMIBIA	(IV)	
SOUTH AFRICA	(IV)	
AWAZILAND	IV	
ZIMBABWE	IV	
WEST AFRICA		
BENIN	IV	
BURKINA FASO	IV	
CAPE VERDE	none (I)	*
GAMBIA	IV	
GHANA	IV	
GUINEA	IV	
GUINEA-BISSAU	IV	

Countries in BOLD have ports	Type of Prevention	*
WEST AFRICA (continued)		
IVORY-COAST	IV	
LIBERIA	IV	
MALI	none (I)	
MAURITANIA	III	
NIGER	IV	
NIGERIA	IV	
SAO TOME AND PRINCIPE	IV	
SENEGAL	IV	
SIERRA LEONE	IV	
TOGO	IV	
EAST ASIA		
CHINA	none (II) (IV)	*
KOREA, DEMOCRATIC PEOPLES REPUBLIC OF	none (I)	*
KOREA, REPUBLIC OF	none (I)	*
SOUTH EAST ASIA		
CAMBODIA	(IV)	*
EAST TIMOR	(IV)	
INDONESIA	(IV)	*
LAOS	IV	
MALAYSIA	none (IV)	*
MYANMAR, (FORMERLY BURMA)	(IV)	*
PHILIPPINES	none (IV)	*
THAILAND	none (IV)	*
VIETNAM	IV	*
INDIAN SUBCONTINENT		
AFGHANISTAN	IV	
BANGLADESH	(IV)	*
BHUTAN	IV	*
INDIA	(IV)	
NEPAL	III	
PAKISTAN	IV	
SRI LANKA	III	*
AULSTRALIA AND THE PACIFIC		
PAPUA NEW GUINEA	IV	
SOLOMON ISLANDS	IV	
VANUATA	III	*
MEXICO AND CENTRAL AMERICA		
BELIZE	none (II)	*
COSTA RICA	none (II)	*
EL SALVADOR	none (II)	*
GUATEMALA	none (II)	*
HONDURAS	none (II)	*
MEXICO	none (II)	*
NICARAGUA	none (II)	*
PANAMA	none (II) (IV)	*

Countries in BOLD have ports	Type of Prevention	*
SOUTH AMERICA		
ARGENTINA	none	*
BOLIVIA	II	*
BRAZIL	(IV)	*
COLOMBIA	(II) (III)	*
EQUADOR	(IV)	*
FRENCH GUYANA	(IV)	*
GUYANA	(IV)	*
PARAGUARY	II	*
PERU	(II) (IV)	*
SURINAME	(IV)	*
VENEZUELA	(II) (IV)	*
CARRIBEAN		
DOMINICAN REPUBLIC	(II)	*
HAITI	(II)	

*more details see *SHIP Guidelines for Malaria Prevention Onboard Merchant Ships*

Early diagnosis and treatment for a febrile illness

Fever occurring in a seafarer 1 week or more after entering a malaria risk area, and up to 3 months after departure, is a medical emergency that should be investigated urgently. If the diagnosis of malaria is suspected onboard, call for radio medical advice immediately.

In case of probable malaria treat the patient first and then arrange for definitive diagnosis. A definitive diagnosis can be made by microscopy of stained blood films.

Standby emergency treatment

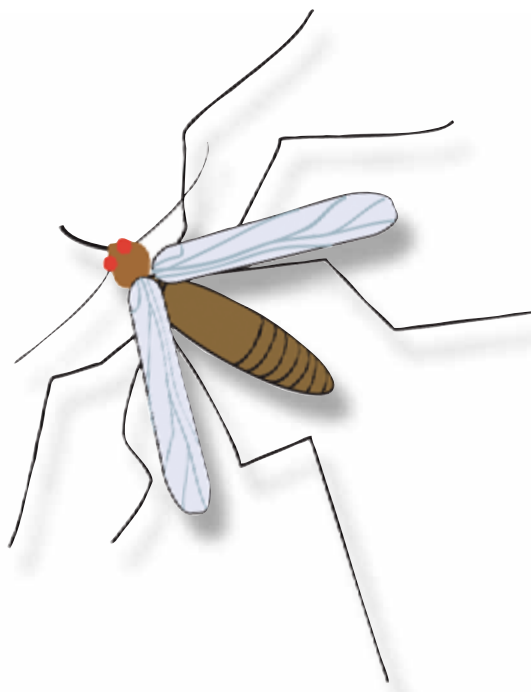
Standby emergency treatment has an important place in the prevention of death by malaria in seafarers. Standby emergency treatment is indicated for seafarers, who make frequent short stops in endemic areas over a prolonged period of time.

Standby emergency treatment is started when fever and flu-like symptoms occur after being in an area with a malaria risk and where it is not possible to obtain medical attention within 24 hours.

Call for radio medical advice when standby emergency treatment is considered. A full course of effective treatment should always be given once a decision to give anti-malarial treatment has been reached.

Several kinds of malaria medication can be used for standby emergency treatment, often in combination. Guidance can be found at the World Health Organisation website, www.who.int, and in the “Guidelines for Malaria Prevention Onboard Merchant Ships”. Copies of the guidelines can be downloaded at the following website: <http://www.seafarershealth.org/documents/A4-GUIDELINES-MALARIALow.pdf>.

A person who is developing an attack of “probable malaria” onboard, is best assisted and controlled by a colleague constantly. All seafarers who were treated on board for “probable malaria” have to consult a doctor upon arrival (if possible with blood slides). 📄



The Ship's Officer Crisis of Tomorrow

*By Captain Richard Gayton
Principal Surveyor Shipowners Claims Bureau,
Inc. New York, NY*



It is generally well accepted that the shipping industry has been heading towards a manning crisis for some years now, but little has been done to prevent it to date.

In the last few years this crisis has deepened. The recent boom in world trade, which has been triggered by massive growth in China and India, has increased the demand for new ships. Shipyards all over the world are working at full capacity on new buildings and these additional ships will all require manning. Statistics indicate that, based on the current availability of manpower, the industry will struggle to man the volume of vessels entering service in the next five years. While there is no present shortage of ratings, the real problem is sourcing qualified officers and BIMCO/ISF has predicted that there will be a global shortage of as many as 46,000 officers by 2010.

Retaining good crew

Retaining "existing" officers in today's competitive environment is also a very real challenge for the present day Shipowner. Reduced training over the last couple of decades, combined with natural attrition, has resulted in a dwindling pool of skilled officers in the marine industry. This problem has also been exacerbated by the needs of a developing LNG fleet worldwide. These vessels require specially trained and experienced officers who are continuously being drawn away from the regular tanker fleet, by increased benefits.

Statistics also show a general decline in the numbers of young people entering the profession globally. This is a major concern and has been the topic of several recent conferences. Why are young people not interested in going to sea anymore? Salary rates have risen sharply in the recent past and continue to do so. However, these salaries are still not encouraging a new generation of officers to the industry. The types of young men and women normally expected to be entering seagoing professions, seem to be more interested in careers in the oil and technology based industries, which inevitably provide better benefits. When I first went to sea, some three decades ago, there was a certain charisma attached to my chosen profession.

Seafaring is not the career it once was

This was a noble career, entered by many before me, that had a certain romance about it. Time has changed and now the realities of a seagoing career are very different. The romantic side has faded in favour of an apparently colder industry, focused on

time and cost based savings. With reduced manning, considerably higher global regulation and possibility of imprisonment for officers considered delinquent in their responsibilities, it is no wonder that these careers now look somewhat unattractive. The emphasis is now on covering ones self and the basic enjoyment of the officer's job seems to have been effectively sidelined.

The shipping industry is now looking at China to fulfill its crewing needs for the future. Sources there indicate that Shipowners and crewing agencies are now looking to the inland provinces to supply their needs. These areas are relatively poor and the salaries offered are still attractive to the younger people there. Some of the larger companies, such as COSCO, are head quartering their manning bases in these inland provinces.

Statistics show quality manning decline

The marine insurance industry is well aware of the significant increase in accidents over the last few years. According to recent global research from the International Union of Marine Insurance (IUMI), ship losses have soared by more than a third in the last two years and there is no sign that this increase is slowing. DNV have also highlighted that the shortage of qualified crew and heavy commercial pressures in a “booming” shipping market as two of the main factors behind the recent upsurge in marine accidents.

Hull underwriters in London have also recognized this problem and the need to maintain crews of an acceptable standard. London's Joint Hull Committee has revised its original JH10C Office Management survey clause to address the crewing concerns. This revised “crew and office management assessment” clause calls for all recommendations to be complied with by-dates required by the surveyor; and all recommendations described by the survey as ongoing to be complied with throughout the period of insurance. Their surveyors have been asked to focus on the following areas:

- details of the crewing agent, and the relationship with the shipowner;
- age, experience and qualifications of the master and chief engineer;
- certificated crew composition and experience;
- competence testing during recruitment;
- performance appraisals and identification of training needs;
- competence testing during recruitment;
- percentage of crew that are retained;
- whether crew are familiar with the specific vessel or vessel type;


- quality of crew accommodation;
- number of cadets that are on board;
- watch keeping procedures; and
- whether there is a common operational language.

The P&I market, like the rest of the marine insurance industry, is also concerned about the impending shortage of experienced, well trained officers. The International Maritime Organization (IMO) has also recently been under pressure to address training concerns and currently have their STCW 95 convention under review (see the article by A. Mahapatra in this issue of CURRENTS). However, these standards are minimum ones and actual training programmes worldwide differ significantly.

Summary

European countries implement more practical based officer training programmes, with stronger emphasis on “on the job training”, resulting in increased sea time requirements. Most European countries favour combined deck /engineer licenses. It is generally recognized that this combined training results in a better officer with more rounded knowledge. However, the draw back here is that the duration of training courses are significantly increased. Due to the current manning crisis countries such as France and reverting back to the old system and single disciplines so that course durations maybe minimized.

The Far East generally favour training programmes with a higher emphasis college / classroom course work. Officers in these regions are being issued Certificates of Competency under STCW 95, with the absolute minimum sea time requirements of as little as twelve months. Therefore, it is no surprise that junior officers, sometimes even senior officers are found inadequately experienced for their respective ranks. Also of note is the continued commercial pressure on Authorities to further reduce minimum manning requirements and we are now seeing more and more Junior officers positions cover by uncertified officers.

This worsening crisis can only be avoided if extraordinary measures are taken now. A culture of safety and operational integrity needs to be promoted and the shipowner must focus on recruitment, training and retention programmes, if any progress is to be made. If these immediate goals are not met then the shipowner will inevitably face significantly increased insurance premiums as the industry struggles to keep pace with claims. 

Competent Crews and the Exercise of Due Diligence

*by Captain Robert K. Rayner
President & CEO, IDESS Interactive
Technologies Inc Subic Bay, Philippines*

Transporting goods by sea is a venture that entails considerable risk and, consequently, potential loss. One of the most effective ways of reducing risk is to employ competent crews, and have systems in place that manage competence and assure that it is maintained.

No one in their right mind would put a multi-million dollar asset – their ship and its ability to earn (and lose) money – in the care of individuals who were anything other than competent. Yet that is exactly what is happening, and on an ever increasing scale in the shipping industry.

Contracts of affreightment require that:

the carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:
(a) make the ship seaworthy; and
(b) properly man, equip and supply the ship.

They do not necessarily require the ship to be safe to be considered seaworthy.

The ISM Code on the other hand specifically sets out to provide an: *international standard for the safe management and operation of ships to ensure safety at sea, prevention of human injury or loss of life, and avoidance of damage to the environment, in particular to the marine environment and to property.*

It has thus long been established, in common law, by statute and by regulations as well as common sense, that the human element is a fundamental component of what constitutes “a safe ship and a seaworthy ship.”

The STCW Convention has set the standards with which the human element should comply. The great achievement of the 1995 amendments to the STCW Convention was that they changed standards of training from knowledge-based criteria to performance-based criteria. It was the start of the move

towards competency-based training and assessment for the shipping industry.

However, more than 11 years have passed since STCW 95 entered into force on the 1st February 1997, and the reality is that the implementation of competency-based training and assessment still has a long way to go. To understand the reasons for this we need to evaluate prevailing attitudes towards competence in general.

In our industry we seem to have adopted a particular belief:

Once Certificated always Competent

Competence is widely perceived to be an immutable constant, when in fact it is a dynamic variable, with in both companies and individuals.

We do not distinguish between a second officer who has for the last two years been serving on a small product tanker that transits the Singapore Straits every three weeks, and a second officer serving on VLCC that is on a regular run between Ras al Ju'aymah and Europort for the same period.

It is surely reasonable and indeed sensible that competence be periodically verified, by assessment at the individual level, particularly when defined as Safety Critical or Mission Critical, or when there are changes in policy, equipment, or procedures.

However, only a minority ship owners and managers operate competency management systems that would provide even the basic requirement for assessing workplace performance against international standards.

And that is the real issue – ***performance in the workplace*** – not just in the maritime college or the training centre. Seafarers leave colleges and training centres with what we believe to be newly acquired knowledge and skills, and impressive certificates. But how do we know if the new knowledge and skill is transferred to the workplace. Indeed, is the training and education received even applicable to the new operating conditions that they will be working in. Being able to answer that question is crucial in determining if a ship's crew have the right knowledge, skills and attitudes required for the jobs they have to do.

Optimizing the competence that resides within an organization is an essential factor in maintaining competitive advantage. Individual knowledge, skills and attitudes are the foundations of a company's

success. It is the actions of employees, seafarers in this context, which secures that success.

So why do so few ship owners and managers embrace Competency Management?

There appears to be a number of barriers which are worth highlighting.

One could be caused by the demographics in companies. Many of the senior managers, the decision makers, are ex-seafarers who went through a “traditional” knowledge-based system of Maritime Education and Training during the late 1960’s, 70’s and early 80’s, a time when Vocational Education and Training was not yet “in vogue.” Many of them are simply not familiar with the underlying principles of a competency-based system and consequently find it difficult to deal with the issues of managing competence within their organization.

It is likely that during their own seagoing careers, at no time after they were qualified was their performance in the workplace assessed against performance criteria, so the concept is alien to them.

And some managers fear the outcome. For instance, what if assessment reveals that an individual, let’s say an officer, is not able to meet specific performance criteria. This will mean that the company will be aware of the deficiency and have to take corrective action. Practically speaking the corrective action could amount to no more than a revision and practice of previous training, or an update on new procedures. Either way the deficiency is discovered early within the company, and not by a port state or vetting inspector; or worse it becomes a contributory factor in an incident later on.

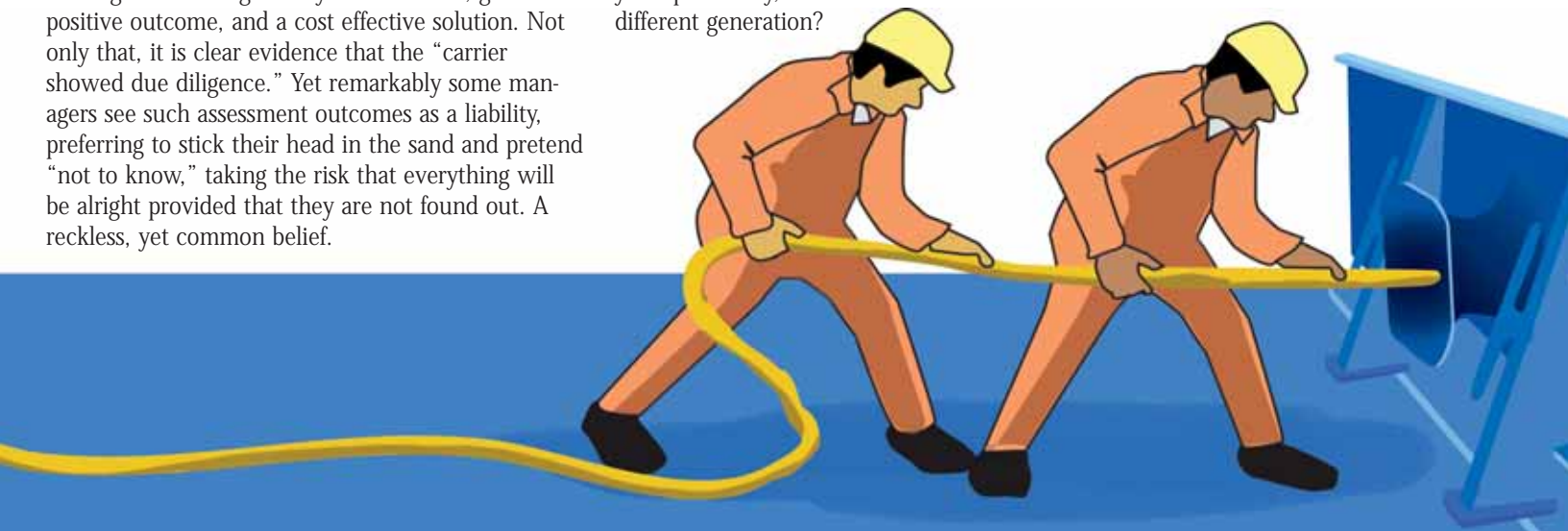
Finding it and fixing it early and in house, gives a positive outcome, and a cost effective solution. Not only that, it is clear evidence that the “carrier showed due diligence.” Yet remarkably some managers see such assessment outcomes as a liability, preferring to stick their head in the sand and pretend “not to know,” taking the risk that everything will be alright provided that they are not found out. A reckless, yet common belief.

It is worth mentioning here that companies need to understand that it is essential that the individual who has responsibility for Managing Competency within a company is properly qualified for the job. A statement of the obvious perhaps, but look into any ship-owning company, ship management company, or manning agency today and in the majority of cases you will find that the person having responsibility for the training and career development of seafarers is invariably an ex-seafarer, with little or no background in HRD or HRM. They know about the job onboard, but rarely are they properly qualified or experienced as Human Resource Developers and/or Managers, or as trainers and assessors.

Depending on the size of the fleet it will also be necessary to employ one or a team of additional staff to carry out the functions of work place assessors. These will be some of the most important people in an organisation, the ones who will ensure that performance onboard meets the standards that underpin the company’s business goals and objectives, measure the effectiveness of training strategies, and determine if the ROI on training expenditure meets expectations.

Another possible barrier is resistance to change.

Competency Assurance does mean that significant changes will have to be made to how training and development is done within an organization. Apart from having the right people to run the system as mentioned earlier, it will require the co-operation of the seafarers, particularly the senior officers, and a change in attitudes towards assessment of individual performance. Other professions do this on a regular basis, most notably airline pilots. Would any one of us be comfortable flying in an aircraft where the pilot has not been checked out since he first qualified, 25 years previously, and then on an aircraft from a different generation?



Currently the shipping industry is struggling with a “manning crisis.” The competition for qualified personnel between companies has resulted in a marked relaxation of standards. Individuals who, a few years back, would normally not be hired because they do not meet the selection criteria of a company, are now being signed on.

This is usually explained away as an unfortunate reality which the industry has to live with for the time being, and is described as a “commercial risk.”

Unfortunately the present manpower climate is exposing weakness in management. Instead of raising standards, the bar is being lowered. Some senior managers are sidestepping the issue by saying that “this is not the right time” to implement new systems that seek to manage and validate human performance, because the seafarers will not accept it. From our experience, if Competence Management is properly explained to the seafarers, they will embrace it. After all it is a tool for the development of their professional skills and career advancement, and personal safety. It is simply a change management issue that requires support and commitment from the top. And now is the time to do it.

A small number of companies in our industry have already started, or are about to start, using competency management systems, and it is no surprise to see who they are. Their names are already synonymous with high operational standards.

High Reliability Organisations, such as aircraft carriers, nuclear power plants, air traffic control, and airlines, all use competency management as one of the defences against loss caused by human error. Through training and development activities, individuals become competent. Gradually their work becomes second nature and they reach a level of almost automatic performance to a high standard. It is an on-going cycle of continual, professional development that will reduce risk and improve the predictability of good performance.

Today we can measure every part of the ship’s operation. We know when machinery and other equipment are not performing according to specification, but how do we measure human performance in the work place? Frankly, not very well, is the answer. And that has to change. The means to assure crew competence exists. Changing our attitude to what we think competence is, acknowledging that it is a dynamic variable, and accepting that we should engage in performance monitoring in the work place will, I am convinced, reduce accidents, improve safety, increase profits and ultimately reduce the frequency and magnitude of claims. [↗](#)



Fair Winds and a Following Sea

Karlene H. Roberts, PhD.
Director of the Collaborative for Catastrophic Risk Management University of California at Berkeley

Having a good day at sea is as dependent on safe and reliable operations as it is on fair winds and a following sea. The University of California at Berkeley had a research team working for a number of years on understanding the human processes required to operate organizations in which errors can have catastrophic consequences. We call the organizations in this arena that do particularly well high reliability organizations or HROs. A HRO is an organization conducting relatively error free operations, over a long period of time, and making consistently good decisions, that result in high quality and reliability operations.

A consistent set of HRO processes were first observed aboard U.S. Navy aircraft carriers as they engaged in their high tempo, often dramatic, aviation operations. In the years since that original research was completed a number of organizations in sensitive operations have adopted all or some of those first organizational principles. Some of these organizations are in the maritime industry, some in healthcare, some in commercial nuclear power production, some in commercial aviation, etc.

The problem for organizations is that error isn't simple. Catastrophic error requires organizations because no single human being has the resources to create catastrophic outcomes. An example is 9/11 in which people used the resources of two organizations to wreak havoc on yet other organizations. Error is not a human factors problem, it is not a design problem, it is not a building problem, it is not a training problem, it is not a motivational problem. It is all of these and more. And, as the journalist Robert Pool says:

In a generation or two, the world will likely need thousands of high-reliability organizations, running not just nuclear power plants, space flights, and air traffic control, but also chemical plants, electrical grids, computer and telecommunication networks,

financial networks, genetic engineering, nuclear waste storage, and many other complex, hazardous technologies. Our ability to manage a technology, rather than our ability to conceive and build it, may be the limiting factor in many cases.

Here is a set of high reliability processes many organizations are trying to adopt in their day to day operations. Whether your organization needs all of these processes, some or a few, is up to you. HRO implementation is not a "one size fits all" approach. It is the molding of a set of human processes to the needs of your particular organization. And, by the way, a well validated paper and pencil assessment of these processes exists (www.HFA-OSES.com).

1. Process auditing

The first characteristic of this management model is process auditing or an established system for ongoing checks designed to spot expected as well as unexpected safety problems. Safety drills are in this category, as is equipment testing. Follow-ups on problems revealed in prior audits are critical. It makes reasonable sense that process auditing failure is an aspect of the container ship, COSCO BUSAN, allision (contact with a stationary body) with the San Francisco/Oakland Bay Bridge.



2. Reward systems

The reward system is the payoff an individual or organization receives for behaving one way or another. Research long ago showed that organizational reward systems have powerful influences on the behavior of people in them. Similarly, inter-organizational reward systems also influence behavior in organizations. Thus, for example, if a regulator in an industry points to one organization as the gold standard in that industry the reward has an effect on things that organization and its people in it will do. It also has an effect on what other organizations in the industry do as they try to emulate the gold standard.

3. Quality degradation

Avoiding degradation of quality and/or avoiding developing inferior quality is the essence of this process. It refers to the essential quality of the system as compared to the referent generally regarded as the standard of quality. We try to convince organizations that they want to be the gold standard for their industry. We have lots of examples of how deferred maintenance leads to quality degradation and severe safety problems.

4. Risk perception

There are at least two elements of risk perception. Whether or not there is knowledge of risk, and if there is knowledge that risk exists, the extent to which it is acknowledged and appropriately mitigated. Part two is the logical outgrowth of part one. Often the culture of an organization will promote “not on my watch” or NIMBY behavior and people simply ignore the possibility of risk. This was an important factor in the sinking of the Titanic. Ignoring risk was also a part of the Piper Alpha disaster.


5. Command and control

Command and Control consists of five elements:

1. *Migrating decision-making.* The person with the most expertise makes the decision regardless of where that person is in the hierarchy.
2. *Redundancy of people and/or hardware.* This consists of some kind of back up system. Duplication doesn't count as redundancy because if both redundant systems are exactly alike both have a higher probability of failure than if the back ups are unlike but complementary.
3. *Senior managers have the “big picture.”* They don't micromanage. They trust their subordinates are well enough trained that they can do their jobs without micromanagement. We have a lot of examples of catastrophic accidents because no one was overseeing the whole operation.
4. *Formal rules and procedures.* A definite existence of hierarchy but not necessarily bureaucracy in the negative sense. In the face of war military units often become flexible to meet changing conditions. But no one has ever heard of one that didn't have rules and procedures.
5. *Training.* Training is like the three rules of real estate – location, location, location. Well here it's

training, training and more training. And what's the first thing to go when organizations find themselves in a financial bind?

In sum, here is a set of processes organizations can engage in, in their attempts to be reliable and safe and avoid catastrophe. Numerous organizations have now tried some or all of them and their safety performance records are improved.

But we dare not leave before asking what is required to be a low reliability organization or LRO. People in LROs attend meetings and solve nothing, catch airplanes and miss “connections,” conduct briefings and persuade no one, evaluate proposals and miss the winners, and meet deadlines for projects on which the plug has been or should be pulled. They are also organizations in which people shuffle papers and lose a few, and focus on success. They also focus on efficiency, lack diversity, filter information and reject early warnings of quality degradation. Are you in a high or low reliability organization? 

¹Pool, R. *Beyond Engineering: How Society Shapes Technology.* Oxford University Press, New York (1997)

²Libuser, C. *Organization Structure and Risk Mitigation Dissertation submitted in partial satisfaction of the requirements for the degree of Doctor of Philosophy in Management, University of California, Los Angeles (1994)*

Hatchcover Inspections and Maintenance – The Basics (Part II)

Steel to steel contact

In order to avoid packing rubbers from taking the entire weight (load) acting on a panel, it is important that panels are supported. If not, the packing rubber would be subjected to excessive loads. This will result in over-compression that can lead to premature development of a permanent setting which should be avoided. Actually, permanent setting of the rubber over the years is unavoidable, but proper operation can lead to a longer the in-service life of the packing rubber.

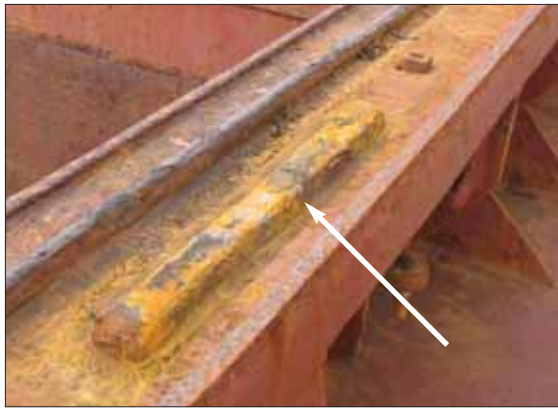
This can be done by installing a supporting system which is generally referred to as a “bearing pad system”. Years ago, panels were kept in their correct sealing position through contact of the panel side plating with the coaming table. Today, the steel to steel contact is generally achieved through purpose built bearing pad systems specifically designed for different types of ships, retrofits, etc. Many types of bearing pad systems are available on the market to choose from. However, they all have one thing in common: they keep the panel in its correct position from a compression point of view.

Bearing pads should allow panels to move which requires smooth contact/mating surfaces since there movement between the panels and the coaming.

Moreover, and modern bearing pads will reduce the steel to steel contact between the panel and coaming to a number of dedicated points along the coaming table, “point loads” will be acting on the coaming table. Since hatch covers panels are heavy pieces of equipment, the loads acting on the bearing pads are large. If these loads would be acting on “unstiffened” or unsupported areas of the coaming table, the coaming table can become deformed. Therefore, bearing pads are designed with a specified calculated load surface. They must be fitted in specific positions

This article is the second part of a three part series of three articles on hatch cover inspection and maintenance prepared by Mr. Walter Vervloemsem from International Marine Consultants & Surveyors (IMCS) in Antwerp, Belgium. The first part of the article was issued in the November 2007 issue of CURRENTS. The third and final part of this article will be forthcoming in the November 2008 issues of CURRENTS.





Corroded bearing pad with rough mating surface



Worn bearing pad, causing over-compression of packing rubbers and undue stresses on panel hinges, wheels,...



If bearing pads can not move/slide over their mating surface, cracks will occur in the side plating or...



... in the coaming table

that will allow loads acting on the bearing pads to be transferred to the ship's structure. This is done during the design (or retrofit) stage. As also the bearing pad will succumb to wear during its in-service life, control over the design compression will be lost and eventually this will affect the design compression of the packing rubber and result in the packing rubber becoming over-compressed.

To avoid this, bearing pads should be carefully and regularly inspected (height measured). The bearing pads regulate the design compression. Design compression is a question of a few millimeters and the maximum wear-down of the bearing pads is also a question of millimeters. Unfortunately, in practice, we see the importance of bearing pads and their function is unknown, underestimated or misunderstood and consequently can lead to wetting damage and hatch cover problems. When inspecting hatch cover packing rubbers, surveyors and shipboard staff and superintendents, should ask themselves what has caused the packing rubbers to deteriorate or become damaged, rather than immediately attributing the water ingress to deficient packing rubbers. Still today, and in cases where over-compressed packing rubbers were mainly identified as being the reason for wetting damage, we see effort and money are being placed in replacing worn/damage packing rubbers whereas actually wear-down of the steel to steel contact is a real issue.

When bearing pads wear down, shipboard repairs would consist of fitting shim plates until the height of the bearing pads are restored. However, and in view of the loads that are acting on the bearing pad surfaces, especially when shims of a few millimeters are welded, the welding seam will not be sufficiently strong to withstanding in-service loads and the shim plates will fail/part.

If the steel to steel contact is not checked and restored prior to replacing packing rubbers, then the newly fitted packing rubbers will deteriorate quickly again.

Finally, one should not loose sight of the fact that, apart from causing packing rubbers to become unduly compressed, excessive wear of the steel to steel contact will result in panels sitting too low on the coaming table and eventually further problems at the level of wheels, hinges etc. will become apparent.

Correct positioning and restricting panel movements: Locators/stoppers:

Hatch covers have to be properly guided into their correct sealing position when being closed. Locators

are positioned in such a way that they keep the panels compressed against each other in all conditions and which ensure that the compression bar contact will be centered in the middle of the packing rubber width (in case of normal box seal packing rubbers).

Furthermore, it should be noted that movements at the coaming or packing rubber/compression bar level will be in the vertical and horizontal planes. In case horizontal movements of the panels are not restricted, excessive forces might be act on the hatch cover hinges, pins, packing rubbers etc. Therefore, manufacturers have designed stoppers that will restrict athwartships and fore/aft movements in order to avoid excessive movements and consequent damage to the hatch cover system (for bulk carriers, see also IACS UR S30 re-securing devices and stoppers).

In a number of cases, locators (or centering devices) might be included in the stopper arrangements, but may also be stand-alone items. Taking into consideration that also in the horizontal plane movements should be limited, it is clear that wear and clearances in way of stopper/locator arrangements have to be observed.

Securing the panels: The cleats

When discussing securing the panels in place, most people believe that perimeter cleats should be tightened, and cross-joint wedges driven home, with force so that the panel is “well secured”. Doing so is incorrect and contradictory with what has been stated in this article so far. As panels must be flexibly mounted and be allowed to move (within certain limits), securing the panels as tight as possible means the panel have no more room to move. If cleats are tightened up too hard, the complete system will become too rigid under the force of hull distortions whilst on passage. This could result in failure of the cleating system (e.g. damaged snugs, deformed crutches, broken rods) and even in deformations of the coaming table).

In order to allow cleats to follow the panel movements, the standard perimeter quick acting cleats are fitted with rubber washers (sometimes, long rod-type cleats will provide some extra flexibility). However when hatch covers fail a hose or ultrasonic test, we observe all too often that the spanner (and extension pipes or cheaters) is used to over tighten the nuts of the perimeter quick acting cleats so that the rubber washers are reduced to “pancake” size. Doing so will result in the system becoming too rigid.



Measuring clearance in way of side stoppers



Tightening cleats with spanner and extension pipe (“cheater”)



Overtightened rubber washer of quick acting cleat



Damaged quick acting cleat snug on panel side plating



Holding down device on container vessel



Coaming table in way of quick acting cleat cut-out reduced in thickness through corrosive action



Note shipboard made triangular striker plate for cross joint wedge (bad practice)



"Banana" shaped cross joint wedge

Tightening this way is generally only performed to pass the water tight test, but if cleats would be excessively tightened-up before sailings, the cleats might break away or fail whilst on passage and leave panels unsecured which is potentially dangerous.

We generally see that quick acting cleat rubber washers are fitted with a spacer ring which avoids over-tightening of the packing rubber. However, I have seen a case where, in order to be able to squeeze the rubber washer as much as possible, the ship's crew was ordered to remove these spacer rings!

Cleats are available in many designs to suit the type of ship and hatch cover, but it should be remembered that they are there to hold the panels in place when at sea, allow relative movement of the panels and maintain a weathertight seal.

Forces acting on the cleats will also depend of the loads that are carried on the covers. On container vessels, it would be almost impossible to secure the panels with the conventional types of quick acting cleats. Taking into account that hatch covers on container vessels are used to load high and heavy stacks of containers, keeping the panel in place when at sea would require a large number of conventional quick acting cleats.

On these ships, where strict turn round schedules have to be respected, having to secure a huge number of cleats would be both impractical and time consuming as well as interfere with shipboard operations and sailing times. Therefore, panels on these vessels are frequently secured with so-called "holding down" devices which consist of lugs on panels and on the hatch coaming. These are connected by means of strong thick steel pins (locking bolts) which lock the panel to the coaming. In line with what has been stated above, small tolerances (in range of a few millimeters) do apply to avoid that panels would be taking up hull girder stresses, but excessive clearance may result in serious damage or problems.

Finally, perimeter cleats are fitted to the coaming table and therefore it should be checked that the coaming table is still structurally sound. If not, the cleats might simply be pulled through the coaming table leaving the panels unsecured.

In case of multi-panel hatch designs, adjacent panels should also be kept properly aligned in the horizontal plane in the cross joint areas to ensure that an equal pressure is acting on the cross joint packing rubber. For such designs, cross joint wedges will be fitted.



Corroded, rough and uneven compression bar

Also the rule of avoiding over tightening applies, but yet, the well known “banana” shaped cross wedges, acting on steep, triangular shaped shipboard-made striker plates are still frequently seen on many vessels.

This is a reflection of the bad practice of “the harder it is to drive the wedge home, the better it will secure the panel”. The contrary is true and only strong, straight cross joint wedges (with leaf spring duly fitted) will do the job properly. Cross joint wedges are fitted on the hatch top plating, but attention should be paid that they are fitted in way of stiffened panel structure, as otherwise the forces acting on the cross joint wedges will only result in deformation of the top plate instead of being transferred lower down to the packing rubber/compression bar interface.

Compression bars

In order to achieve a weathertight seal, the packing rubber should be acting against a mating surface which will generally be a compression bar. As the rubbers are compressed to their design compression (which means that they have to be compressed with a considerable force) there will be relative movement between the panels and the coaming table. In way of the packing rubber/compression bar interface, the compression bar will be subject to considerable loads.

Therefore, the compression bar should be sufficiently thick and strong. If not, the combination of in-service loads/forces and panel movements may lead to failure of the compression bar. Furthermore, as a result from movements in way of the compression bar/packing rubber interface, packing rubbers will be rubbing continuously over the compression bar's sealing surface. Therefore, the sealing edge of compression bars should be smooth (i.e. without scale, rust, debris) as contact with a rough surface will result in abrasion/scuffing damage and premature wear of the packing seal.

Finally, since hatch cover weather tightness depends on an efficient weathertight seal, it will be understood that the compression bar must be even. Unevenness will result in uneven compression. Even missing by a few millimeters on compression in the packing rubber/compression bar interface will invariably affect the compression status (either under-compression or over-compression, both of which are to be avoided). Finally, it should be checked that the packing rubber/compression bar contact mark is always properly aligned to the center of the packing rubber sealing surface because if not properly aligned, sideways panel movements may be hampered.

Over the last years, manufacturers have identified that there are ship types where sideways panel movements are so large that a normal type of compression bar/packing rubber system may no longer be adequate. In such cases, manufacturers will design a system with a “sliding type” seal, which is able to slide over the coaming table while being compressed thus accommodating more significant movements.

In order to avoid premature deterioration of the sliding seal, it should be checked that the contact surface/mating plate on the coaming is absolutely clear, and free from rust/scale and debris or any other protruding parts (including welding seams). In some cases a purpose fitted stainless steel mating plate will be welded on the coaming in way of the packing rubber contact area to allow for smooth movements. ↩

Fit for Duty- Dead on Board

*by Dionyssi Constantinidis, LL.M.
KGDI Law Firm Piraeus, Greece*

A 45-year old Greek Captain died recently from “natural causes” at sea on board a Greek tanker just one month after his signing on. The Captain felt unwell while resting in his cabin and died within minutes despite all efforts for first-aid provided by the crew. Before joining he had passed successfully all the standard pre-employment medical examinations and was found totally fit for duty. The Post-Mortem, yet, showed that he had died from severe heart insufficiency and coronary disease, which, no doubt, pre-existed his service but had not been previously diagnosed.

From our experience, which is based mainly on Greek-owned ocean-going ships, pre-employment medical examinations are a very important yet, as it seems, under-estimated issue. A worrying list of similar fatal incidents has made me very skeptical as regards all these pre-employment procedures, which need to be reassessed and, to my opinion, be modified.

Pre-employment medical examinations

The majority of Greek-owned shipping companies oblige their seamen before signing on to undergo a pre-employment medical examination. This “routine” pre-medical refers only to a general medical examination (which mainly consists to “seeing” the seaman to be signed-on, and in many occasions to take blood-test), an X-ray of the chest and an ophthalmological examination (for myopia and achromatopsia).

In practice, this examination is just a typical prerequisite before appointment, which does not guarantee that the seaman is fit to perform his duties or totally healthy to endure the difficulties and stresses of a 7-month (or more) service on board under various climates and extreme weather conditions. Eventually, almost every seaman passes the pre-medical examinations because everybody wants to be considered healthy (even by concealing the slightest problem in his medical history) and be likewise eligible to sign on. In some rare occasions, mainly through the blood-test, the medical examinations meet their objective by detecting existing ailments (e.g. diabetes, high cho-

lesterol, a tumor, HIV-virus, etc.), nevertheless, there are numerous ailments that cannot be diagnosed through these routine tests, such as serious cardio-respiratory problems, degenerative vertebral or skeletal problems, torn knee ligaments, asthma, etc.

Costly claims arising from pre-existing ailments

In our recent experience we have encountered claims for death on board arising from heart-attacks, infarcts, strokes amounting to Euro 600,000 to 3.5 million or for illnesses and alleged injuries resulting to total or partial permanent disability for Euro 100,000-1.5 million etc. The seamen or the next of kin claim compensation for total disability or death on the basis of an accident at work due to extra-ordinary working conditions on board or failure to provide appropriate medical assistance, etc., under the provisions of a special labor legislation regarding accidents at work plus pain and suffering, plus loss of amenities, sickness wages, etc. Although, in many cases the illness may have existed well before signing on, the claimants have succeeded to win the case on the ground of extra-ordinary working conditions or due to the (frequently inevitable) failure to timely disembark the seaman or merely due to the Court’s tendency to sympathize the weaker party.

Regardless of the above, even if there is no death or permanent disability, Owners often face considerable amounts of claims for medical expenses which, in the cases of cardiac ailments (e.g. for by-pass operation, angioplasty for coronary disease, etc.) or vertebral hernias, stomach ulcers, etc., are not at all negligible. Under the best circumstances, when the Masters and Owners are enough diligent, ships have to make lengthy diversions to discharge a sick crewmember needing immediate medical assistance (even for a minor operation) which, inevitably, cause further costs.

On top of that, whenever a case of illness comes to Court, these inconclusive pre-employment examinations may be used or construed as conclusive evidence against the Owners. According to existing precedent, Greek Courts apply what we call the “presumption of good health”, holding that a seaman found fit for duty before signing on is considered healthy in all respects. Accordingly, whatever happens to him during his service on board (e.g. a cardiac problem or a stroke) may be due to abnormal or unfavorable working conditions or excessive work.

Therefore, premedical examinations as we know them should change in order to meet their prime objective: to recruit the most competent crew (physically and mentally) to serve onboard and, above all,

to save lives and “unnecessary” costs for the Clubs and the Members.

Diagnosis of medical condition prior to employment

From our experience, a percentage of the health problems mentioned above could have possibly been diagnosed (and avoided) through a more elaborate examination consisting, for example, from compulsory electrocardiogram, fatigue-test, full body X-rays (or at least of the chest, the knees and the spinal column), etc., or even by obliging the seamen to undergo a complete pre-employment medical check-up. Top-ratings, such as Masters or Chief Engineers should undergo additional examinations, because due to their age and burden of work and responsibilities are more susceptible to illness or fatal occurrences. Additionally, seamen should be obliged to state before joining their medical history and provide details of their family doctor to contact in case of

Owners should use the services of organized Medical Centers before signing on and after discharge. Masters should have a medical file of all crew members on board (and the above Questionnaire, if introduced) to go through in case of emergency.

Such examinations and procedures may be a little more expensive or time-consuming than those presently carried out, but, it is our opinion, that in the end of the day they will save lives and money by diagnosing serious problems before sea-service.

Conclusions

We believe that the Clubs should insist and institute a more “intensified” or serious pre-medical examination. Likewise, Owners shall avoid employing seamen who have serious (yet presently undetectable) health problems, thus, avoiding hiring problematic personnel. What’s more, the Club and the Member



emergency. Special Questionnaires / Declarations, as those used by Insurance Companies, should be introduced referring to the seaman’s medical history. Seamen would be likewise obliged to declare if they suffer e.g. from vertigo, asthma, bronchitis, diabetes, etc., or if they have been recently treated for cardiac arrhythmia or other ailment. They should also list any medication they may take.

shall protect themselves for considerable potential claims. Once this is done, we may consider to institute medical examinations during the service (why not generalize or enrich those random blood-tests carried out by many companies for drug or substances use on board) to safeguard even more the Owners interests in that respect. ↩

STCW 95 Revisited: Where is it Going From Here?

by *Ashok Mahapatra*
*Head of Maritime Training & Human Element
Section International Maritime Organization
(IMO)*

In IMO, the role of the human element in safe ship operation has long been recognised. The first international convention on seafarer training standards – the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) – was adopted in 1978. And since then, IMO has regularly revised and updated that Convention bearing in mind the importance of the human element in safety management ashore and afloat.

By the late 1980's, it was realised by many in the shipping industry that the training standards in the 1978 STCW Convention were not achieving their intended purpose. The main cause for this appeared to be the general lack of precision in its standards, much of the interpretation of which was left “to the satisfaction of the Administration,” which resulted in a widely varying interpretation of the standards. Regrettably, some Parties failed to effectively administer and enforce the Convention requirements and their certificates could no longer be relied upon as evidence of competence.

The loss of credibility of the Convention and political and public concern regarding human related causes of shipping disasters generated growing criticism, not only of the Convention itself, but also of IMO. In response, the Maritime Safety Committee (MSC) with extensive support from Member Governments and the shipping industry decided on an extensive review of the STCW Convention aimed to address international concerns about declining seafarer training and certification standards and poor operational management leading to accidents and pollution.

The last major revision of the STCW Convention in 1995 included a move towards a competence-based training and assessment (rather than one based on knowledge). The main feature of a competence-based system is the way the tasks and skills are defined, in terms of outcomes to be achieved rather than pure knowledge to be gained. One objective of the Convention review was to establish clear outcome-based standards of competence, meeting today's industry demands. Accordingly, the skills, knowledge, understanding and abilities needed to ensure that individuals are capable of fulfilling the roles expected of them at sea have been defined and tabulated. The resulting challenge for maritime education and training is how to achieve the specified outcomes and, having hopefully achieved them, how best to assess performance to be assured that the standards are met.

In considering the remarks of the Secretary-General at the opening of the thirty-seventh session of the Sub-Committee on Standards of Training and Watchkeeping, the Sub-Committee agreed that there was a need to undertake a review of the Convention and invited the Maritime Safety Committee to add a new item to its work programme and agenda for STW 38 “**Comprehensive review of the STCW Convention and the STCW Code.**” The Maritime Safety Committee endorsed the request and instructed the Sub-Committee to define first in detail the issues to be reviewed and advise the Committee accordingly, before embarking on the actual work.

Accordingly, the Sub-Committee at its thirty-eighth session agreed on the areas identified to be covered by this review, as reflected in the ensuing paragraphs.

Definitions

In order to address inconsistencies and advances in technology, it was agreed to include a number of new definitions. At the same time it was recognised that there could be a need for the addition or deletion of definitions emanating from the review.

Fraudulent certificates

In view of the proliferation of fraudulent practices associated with certificates of competency, it was agreed that it was essential to enhance prevention of such practices to combat any malpractices or fraud by reviewing the requirements for the issue of certificates and endorsements.

Near-coastal voyages

The current discrepancies in the definition of near-coastal voyage (NCV) often resulted in problems in relation to Port State Control. Hence, the introduction of an explicit definition of NCV and the review

of the common principles governing these voyages was considered necessary.

Communication of information (White list process)

It was agreed that regulation I/7 and the related sections of the Code should be amended in order to clearly indicate that amendments to the STCW Convention and the STCW Code are not subject to the provisions of this regulation. However, the implementation of amendments to the STCW Convention and the STCW Code should be examined under regulation I/8 regarding Quality Standards. In this context, it was also agreed that regulation I/8 should be reviewed to address:

- 1 changes to training, assessment of competence, certification and revalidation activities emanating from an amendment to the Convention to be covered under the independent evaluation pursuant to this regulation;
- 2 a specific mechanism to monitor the effective application of the Convention requirements;
- 3 terms of reference to ensure that Parties were implementing new or amended regulations that have entered into force on or after the last independent evaluation; and
- 4 the independent evaluation to be carried out in accordance with the requirements of the Convention and not using standards applied in other industrial organizations.

Tanker training requirements

As the training and certification requirements for personnel serving on board tankers had been amended in 1994, during the 1995 revision, it was decided not to revise these requirements until experience had been gained on the implementation of the amended requirements. Hence, the requirements in chapter V of the revised STCW Convention were knowledge-based rather than competence-based. Furthermore, these requirements did not clearly provide specific requirements for different types of tankers. Accordingly, it was agreed that it was necessary to review the requirements in chapter V and revise them as appropriate to provide relevant competence-based standards for all personnel serving on-board different types of tankers. STW 38 also agreed to review the requirements for “ro-ro passenger ships” and “passenger ships other than ro-ro passenger ships” with a view to simplifying the requirements.

Able seafarer

During the development of the Maritime Labour Convention 2007, it was agreed that provisions

relevant to training and certification requirements for able seamen be transferred to the STCW Convention. Accordingly, the Sub-Committee developed competence standards for able seafarer for both deck and engine departments. In view of the ongoing review of the STCW Convention, it was agreed that it would be appropriate if these standards were adopted after the review process had been completed.

Amendments to the STCW Convention and the STCW Code so as to include therein security-related provisions

STW 38 also discussed the issue of the training and familiarization requirements for shipboard personnel with and without designated security duties and agreed that the preliminary text of the draft amendments prepared would need to be re-examined after the review process to ensure the required consistency and to reflect any need for changes which may transpire.

It was also agreed that the review should:

- 1 consider the need to be consistent in the display of information relating to inclusion of endorsements limitations on technological equipment, such as ARPA and GMDSS;
- 2 provide for familiarization training to understand the limitations of automatic systems through familiarization training and inclusion of training recommendation given by performance management guidelines within the Convention;
- 3 review requirements to take into account any recent changes in equipment, technology and terminology;
- 4 emphasis on environmental awareness, in particular, the use of oily water separators; and
- 5 provide guidance relating to ECDIS training and familiarization.

Engine Department

It was also agreed that the review should:

- 1 consider the need for including relevant competences with regard to technological development (electrical engineering and electronics) in the operation of ships;
- 2 provide for familiarization training to understand the limitations of automatic systems through familiarization training and inclusion of training recommendation given by performance management guidelines within the Convention;

- 3 review requirements to take into account any recent changes in equipment, technology and terminology;
- 4 emphasis on environmental awareness, in particular, the use of oily water separators.

Emergency, occupational safety, medical care and survival functions

The review should establish training standards for:

- 1 shipboard safety representative, reflecting the requirements of the ILO Maritime Labour Convention, 2006, as instructed by MSC 81;
- 2 sanitation and hygiene taking into account the information provided in the ships sanitation guide developed by WHO and limited to addressing safety issues; and
- 3 marine environment awareness.

Watchkeeping

In dealing with issues relating to watchkeeping, it was agreed that the review should:

- 1 consider including appropriate security-related and fatigue related provisions/issues;
- 2 provide for proper maintenance of records of hours of rest and to harmonize this regulation with the relevant provisions in the ILO Maritime Labour Convention (2006); and
- 3 consider introduction of mandatory alcohol limits during watchkeeping and other shipboard duties.

STCW Code

It was also noted that following the review of the Convention, consequential amendments to part A and part B of the STCW Code may be necessary and should be considered during the review process.

Pleasure Yachts and commercially operated yachts

In recent times, there has been a marked growth in the large yacht market encompassing both commercial and private yachts. A number of administrations have concluded that although commercial yachts are not excluded from the Convention, it is unreasonable to expect the owners/operators of such vessels to comply fully with the STCW requirements.


Accordingly, a number of countries have developed their own Code of Practice as an acceptable alternative to the Convention. As large yachts were becoming more common, there was a need to provide for harmonised international standards for the qualifications and training of crew operating such yachts.

Outcome of STW 39

At its thirty-ninth session held last month, the STW Sub-Committee agreed that it was imperative to complete the review as soon as possible to meet the demands of an ever growing sophisticated and technologically advanced world fleet. The Sub-Committee agreed to inform the Maritime Safety Committee that it is expected that STW 41 (January 2010), not only will complete the review but would also prepare the consequential amendments. Furthermore, the Sub-Committee also agreed to recommend to the Maritime Safety Committee that the amendments arising from the comprehensive review should be adopted by a Diplomatic Conference in July 2010, with an anticipated entry into force date of 1 February 2012.

In order to ensure that it keeps its commitment, not only to the Maritime Safety Committee, but also to the international shipping industry, STW 39 worked in all earnest, putting in very long hours of work and working in the usual spirit of IMO co-operation, to prepare the preliminary draft text of the STCW Convention and the Code. These preliminary drafts will be discussed further at an intersessional meeting, subject to approval by MSC 84 in September this year. STW 40 in January next year would further consider the outcome of this intersessional meeting with a view to finalize the draft text at STW 41. Bearing in mind the usual spirit of co-operation during STW 39, I am sure that the target for completing the review and preparing the associated amendments to the STCW Convention and the Code by 2010, would be achieved.

Conclusions

In conclusion, the comprehensive review of the STCW Convention and the STCW Code more than ten years after its last major revision would ensure that seafarer on board are adequately trained to meet the new challenges facing the shipping industry today and in the years to come and to complement the IMO mission of safer ships and cleaner oceans. 

International Medical Case Management: Assisting the Shipowners and their Club

by *Christina DeSimone*
CEO, FutureCare, Inc. New York, NY

The International Shipping Industry is responsible for the transport of 90% of the world's trade and maintains an estimated 50,000 merchant ships manned by over one million seafarers. These vessels are loaded and unloaded in seaports around the world, each with tens of thousands of port and associated workers. However, this growing industry lacks the support of an organized healthcare delivery system. Medical care for seafarers varies dramatically in quality and availability between ports. Ship-owners and their insurance providers negotiate with a multitude of port brokers and agents to secure care from a "cottage industry" of local providers.

Managing quality of care and cost is currently unavailable to the ship-owner, except retrospectively. Without a specialized healthcare program built into the ship-owners' company policies, there is no viable way to manage and control the medical aspects of crew claims from the onset. Without this program, the crewmember receives care that may not be qualified or may be clearly substandard. With a structured healthcare program managed by the ship-owners' fleet operations, the illness or injury can be controlled from the onset.


This plan involves assigning an early point of contact for the Captains and fleet managers with trained Medical Care Managers and physician advisors for utilization.

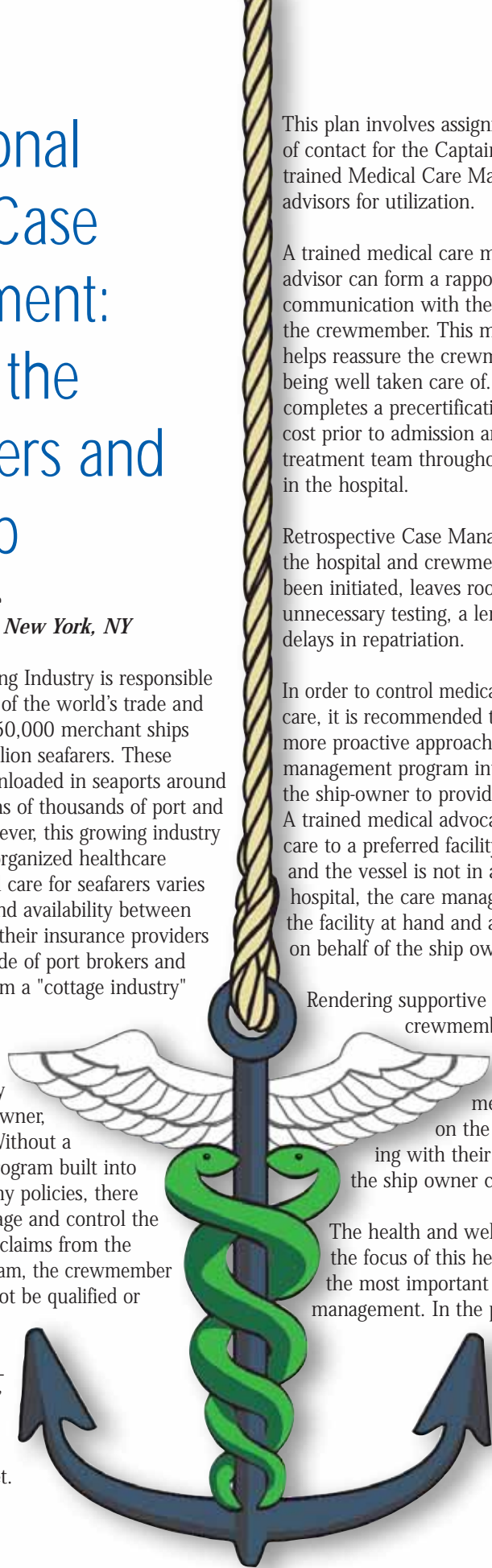
A trained medical care manager and physician advisor can form a rapport and an open line of communication with the attending physician and the crewmember. This method of communication helps reassure the crewmember that he or she is being well taken care of. The care manager also completes a precertification process on care and cost prior to admission and stays in touch with the treatment team throughout the crewmember's stay in the hospital.

Retrospective Case Management or contact with the hospital and crewmember after treatment has been initiated, leaves room for clinical mistakes, unnecessary testing, a lengthier hospital stay and delays in repatriation.

In order to control medical costs and promote proper care, it is recommended that the ship owners take a more proactive approach. Incorporating a Care management program into fleet operations, allows the ship-owner to provide the earliest intervention. A trained medical advocate is appointed to direct care to a preferred facility. If that is not possible and the vessel is not in a port near a qualified hospital, the care manager immediately contacts the facility at hand and announces her presence on behalf of the ship owners.

Rendering supportive counseling to the crewmember and his family from the start and monitoring the care of the crew member has a positive effect on the Ship-owners good standing with their crew and establishes that the ship owner cares.

The health and well-being of the seafarer is the focus of this health care program and the most important aspect of medical care management. In the process, the ship owner will control costs while providing the best care possible for his crew. 



New Faces The Managers are pleased to welcome Ms. Parker Harrison, who joined SCB's New York office in March 2008 as Senior Claims Executive and FD&D Manager. Prior to joining the Association, Parker worked for a number of years as a maritime attorney at Chaffe McCall, LLP in New Orleans, where her practice encompassed charter party disputes, personal injury, cargo, oil pollution, and maritime lien claims, as well as various U.S. vessel documentation matters. Parker will be co-authoring FD&D Corner in future issues, and the Managers welcome any suggestions for topics of interest to the Membership. Parker can be reached at 212-847-4543 or via e-mail at parker.harrison@american-club.com.



FD&D CORNER

by George Tsimis, Esq., Senior Vice President, Head of Claims Department and Parker Harrison, Esq., Senior Claims Executive and FD&D Manager Shipowners Claims Bureau, Inc.

“Rule B Watch Redux: ‘Consul Delaware’ Appeal to Be Argued Imminently”

We continue to monitor developments in the U.S. Court of Appeals for the Second Circuit regarding the validity of Rule B attachments of electronic funds transfers in New York. The pending appeal in the Consul Delaware case has been set for oral argument before the Second Circuit on May 15, 2008. The Court’s opinion is expected to be handed down shortly thereafter and we will continue to advise our Membership as to any developments. This long-awaited decision may potentially have a sweeping effect on existing maritime attachments and may curtail a maritime creditor’s ability to secure its claims in the future against entities that are fleeting and undercapitalized.

It is encouraging that the Second Circuit had rejected an application for the appeal to be heard *en banc* (i.e., by the entire panel of judges of the Second Circuit). This is significant because, without *en banc* review, the *WINTER STORM* decision cannot be overturned, thereby upholding, for the time being, the validity of Rule B attachments of electronic funds transfers at intermediary banks. It may, however, indicate that the *CONSUB DELEWARE* decision could instead carve out an exception to the *WINTER STORM* holding, and restrict such maritime attachments to situations where the funds are frozen at the debtor’s intermediary bank. Such a holding would theoretically reduce the number of sustainable attachments by as much as 50%.

We trust that the Second Circuit will get things right and maintain the general principles behind Rule B, which call for the attachment of assets or property being sent by, sent to, or earmarked for a maritime debtor. We will, of course, keep the Membership updated as to the Second Circuit’s rulings in this matter, and should any of our Members have questions, they should feel free to contact the Managers for a more detailed discussion of the significance of the proceedings in *CONSUB DELEWARE*.

“Baseball, Hot Dogs, Apple Pie, and Maritime Liens”

In March 2008, the U.S. Court of Appeals for the Ninth Circuit reversed a lower court ruling on the application of U.S. maritime lien laws in connection with the supply of bunkers to a vessel at Busan, South Korea in 2003. Specifically, in *Trans-Tec Asia v. M/V HARMONY CONTAINER* (9th Cir. March 11, 2008), the Ninth Circuit addressed the question of whether a foreign supplier of bunkers to a foreign flagged vessel at a foreign port under an agreement invoking United States law holds a maritime lien under the Federal Maritime Lien Act (“FMLA”), 46 U.S.C. Sec. 31301 et seq., and whether it may assert that lien by arresting the vessel while at a U.S. port. In that case, the bunkers had been supplied to the vessel’s charterer by a Singapore bunker supplier through one of its bunkering agents in Busan. After the charterer went bankrupt, the seller then focused its collection efforts on the vessel and its owner. The terms and conditions of the bunker sale contract incorporated General Terms and Conditions which provided that the seller would be entitled to assert its lien in any country where it found the vessel and that each transaction would be governed by U.S. law. These terms also stated that U.S. law would apply with respect to the existence of a maritime lien, regardless of where the seller took legal action. The district court had granted summary judgment in favor of the vessel and its owner and against the fuel provider, holding that the FMLA did not afford a necessities provider with a maritime lien under such circumstances.

Reversing the District Court’s decision, the Ninth Circuit emphasized that the FMLA applied to this transaction and that the maritime lien was enforceable even though the bunker supplier was foreign. It also commented that recognizing the maritime lien under FMLA in this “completely foreign transaction” would not interfere with other nations’ regulation of their own commercial affairs because the parties expressly chose U.S. law to control their transaction (much like the incorporation of an English law/London arbitration clause in a transaction with no nexus whatsoever with England).

It is interesting to note that many bunker supply contracts contain general terms and conditions incorporating English law, which does not recognize a maritime lien for the supply of bunkers. This case illustrates how a bunker supplier or other necessities provider will seek to protect the enforceability of its rights -- even when the bunkers are ordered by a charterer and supplied outside the U.S. -- by referring to such general terms and conditions calling for U.S. law to govern the lien issue. We have previously advised our Membership on ways to insulate itself from such maritime liens (see CURRENTS Issue No. 17, November 2003, at pages 3 and 4), and the Managers stand ready to field any inquiries on these issues.

“What’s In a Name? Express Safe Port Warranty and the ARCHIMIDIS”

In *AIC Limited v. Marine Pilot Limited* (The ARCHIMIDIS) [2008] EWCA Civ. 175, the English Court of Appeal recently addressed the issue of whether the naming of a port in conjunction with an express safe port warranty in a charter party might relieve a charterer of its contractual responsibility for the safety of that port. The M/T ARCHIMIDIS was voyage chartered for a series of voyages to “load one safe port Ventpils” and to “discharge 1 to 2 safe ports United Kingdom Continent Bordeaux/Hamburg range.” Although the charter party terms required the vessel to load a minimum of 93,000 metric tons of gas oil, the vessel was only able to load approximately 67,000 metric tons before reaching its draft limitation at Ventpils.

Charterers argued that “one safe port Ventpils” constituted an agreement between the parties that Ventpils was safe and that it had supplied a full cargo to be loaded there. Owners countered that “one safe port Ventpils” was a warranty by charterers that Ventpils was a safe port and that owners were entitled to deadfreight for the charterers’ failure to load. Owners then sought damages on alternative theories of deadfreight and breach of the safe port warranty in the London arbitration. The arbitrators ruled in favor of the owners on both theories, and the charterers thereafter appealed to the Commercial Court, which sustained the award.

The Court of Appeal affirmed both the arbitrators and the Commercial Court and held that the owners were entitled to rely on the safe port warranty regardless of the fact that the port was named in the charter party. In reaching this conclusion, the Court of Appeal emphasized that there was no dispute between the parties that the charterers warranted the safety of the discharge ports and, consequently,

it would make no sense to construe “load one safe port Ventpils” in the same clause any differently. It also cited Justice Langley’s decision in *The LIVANTTA* [2007] 1 LLR 97 (which we reported on page 35 of our last edition of CURRENTS Issue No. 25, November 2007) that “there is no inherent inconsistency between [a] safe port warranty and a named loading or discharging port.”

This decision should finally put an end to any ambiguity regarding the significance of a named port in a charter party agreement subject to English law. In short, such a provision does not vitiate a charterer’s responsibility to warrant that the vessel will call at a safe port or berth.

“Life Is Like a Box of Chocolates. . . . And So Is a Time Charter Trip”

A recent London arbitration decision dealt with a situation where a vessel was fixed for a time charter trip to carry a cargo from Thailand to West Africa but, due to financial difficulties experienced by the cargo receivers in Nigeria, the cargo was not discharged until 14 months later. The owners contended that the charterers were responsible for the delays and late redelivery of the vessel and argued that a term should be implied into Clause 8 of the NYPE form requiring the charterers to discharge the cargo within a reasonable time. Owners sought damages of approximately US\$1.4 million, which represented the difference between the charter hire rate and the market rate for a period of approximately one year when the voyage from Thailand to West Africa should have been completed. Charterers contended that no charter party provisions had been breached and that the period of the trip in question was the basis for the fixture’s duration.

The Tribunal agreed with charterers and held that there was no need to imply a duty to discharge within a reasonable time. It noted that the parties never discussed the duration of the charter term in their pre-fixture negotiations, although they easily could have agreed to a specific time period for the charter. Absent such a provision, the parties ran the risk that the completion of the “voyage” might take longer than expected. Moreover, the express terms of the charter provided a mechanism to compensate the owner for the delays experienced in this voyage - namely, the daily hire rate for the duration of the charter.

This case is a good example of how “you never know what you’re gonna get” when entering a time charter trip fixture. In this freight market, where rates can increase dramatically in a short time and

with increased commodities prices that may potentially cause the financial ruin of receivers and charterers alike, we recommend that our Membership take the following measures to protect themselves from a situation where their vessels become a floating warehouse and where unforeseen circumstances might prolong a time trip charter: first, the owner can simply require that the charter be for a specific period of time. A second alternative would be to include a rider clause that increases the daily hire rate in the event that the anticipated charter period increases.

“If You Build It, They Will Come: BIMCO’s NEW-BUILDCON Is Here”


The shipping industry has seen a massive newbuilding effort over the last five years and there appears to be no end in sight. Contract negotiations throughout this newbuilding frenzy have been unnecessarily prolonged, hampered, and even thwarted by the lack of a standard core contract suitable for worldwide use. The multiple form contracts currently in use are often inequitable, incomplete, outdated, or of limited application. The Shipbuilders Association of Japan (SAJ) form, for instance, is commonly used as the nucleus of shipbuilding contracts for projects in Japan, South Korea, Taiwan, and China. But beyond its regional limitation, it is also decidedly pro-builder in several key aspects that can seriously impair the buyer’s recourse in the event of design liabilities, the builder’s insolvency, and other unfortunate circumstances.

The Association of West European Shipbuilder’s Form, adopted in 2004, enjoys wide use in Europe but suffers from uncertainty and various unsatisfactory provisions. The Standard Form Norwegian Shipbuilding Contract 2000, created through a collaboration between shipbuilders and shipowners, represents a marked improvement over other standard forms but is still an imperfect solution. And the U.S. Maritime Administration (MARAD) contract, once the primary contract in use in the U.S., is now largely restricted to fleet expansion programs for the U.S. Navy and Coast Guard as a result of the decline in industry and newbuilding activity in the United States. A universally accepted and applicable standard contract form is clearly overdue.

In our CURRENTS Issue No. 24, dated May 2007, we discussed BIMCO’s newly released REPAIRCON form contract for ship repairs; BIMCO has now released its NEWBUILDCON Standard Shipbuilding Contract. This form document represents the final stage of BIMCO’s efforts to provide the shipping industry with a range of standard forms to be used throughout a ship’s life cycle, from design and construction through its ultimate demolition. The form was created with input from all sectors of the ship building industry, which has hopefully yielded a clearer, more balanced core document from which builders and buyers can work.

Highlights include:

- Ease of adaptability to any type of vessel and to any jurisdiction, including specific provisions necessary for projects in China;
- Concise provisions addressing refund and performance guarantees;
- Comprehensive clauses addressing the parties’ respective obligations during production;
- Clearer legal provisions dealing with permissible delays, liability exclusions, insurance, and termination;
- Mutuality of responsibility clauses wherever feasible; and
- Updated dispute resolution provisions.

Although standard forms typically take up to five years to gain general acceptance, the NEWBUILDCON has rapidly attracted interest from shipowners, shipyards, brokers, industry associations, law firms, and financial institutions, indicating that this new form has filled a void in the industry. The form can be accessed at BIMCO’s website (www.bimco.com). 

Recent Damage to Fixed and Floating Objects in Brazil

by **Fernando C. Sobrino Porto**
Lawyer, Senior Partner of Shipping Consultoria
Rio de Janeiro, Brazil

Recently a Member being assisted by four tugs and with a pilot on board, a Maltese flagged vessel, entered with the American Club, touched the no. 2 dolphin during berthing maneuvers to load iron ore at a terminal in Itaguaí, State of Rio de Janeiro, Brazil.

Two judicial proceedings were initiated against vessel's interests. One against her owners and managers for the arrest of the vessel with the objective of obtaining a guarantee to cover the losses which they estimate at US\$ 30 million, and another for a judicial survey (*ad perpetuam rei memoriam*) against her owners and a sub-charterer in order to verify the cause of damage to the dolphin and its extension, the cost of the repairs and consequential losses. The terminal operator requested that the vessel should not be permitted to leave Brazilian waters.

The Judge of the 1st instance Court of the State Justice of the city of Rio de Janeiro considered the request for the arrest but did not grant an *in limine*¹ order arresting the vessel, preferring that a hearing between the parties be held before handing down a decision. The terminal operator presented an interlocutory appeal to the Court of Appeals of Rio de Janeiro, which granted an *in limine* order for the arrest of the vessel to guarantee those US\$ 30 million, with the proviso, however, that would review the *in limine* order after the results of the hearing fixed by the Judge of the 1st instance Court.

¹*in limine* (Latin: "at the threshold") is a motion, made before the start of a trial requesting that the judge rule that certain evidence may, or may not, be introduced to the jury in a trial. This is done in judge's chambers, out of hearing of the jury. If a question is to be decided in *limine*, it will be for the judge to decide. Usually it is used to shield the jury from possibly inadmissible and harmful evidence (Source: Wikipedia).

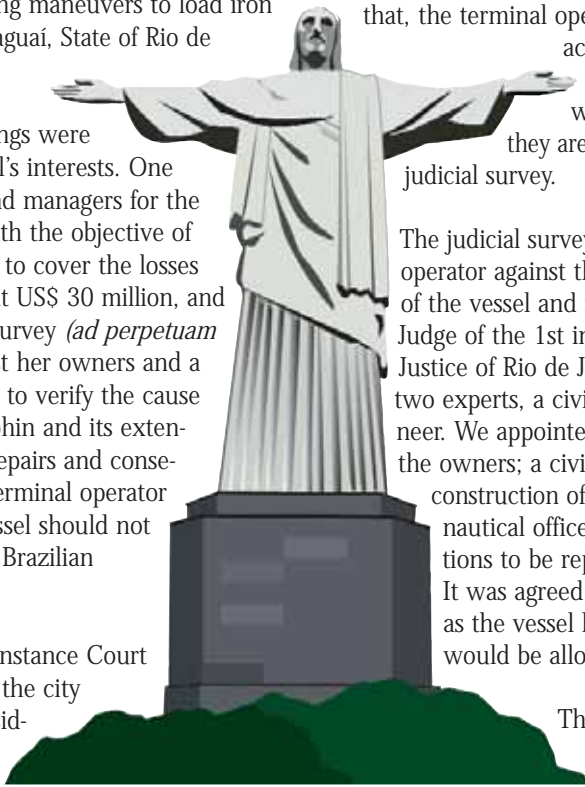
A hearing was held and was attended by the lawyers of the parties involved together with their technicians. After having heard the technicians and each lawyer having presented his allegations in favour of their clients, the Judge, taking into consideration that the Court of Appeals had forewarned that they could review the *in limine* order, decided to partially accept the points we raised and reduced the amount of the guarantee to US\$ 20 million. The Court of Appeals, afterwards and attending the request we submitted on behalf of owners and managers, reconsidered to fixed the guarantee at US\$ 20 million.

A guarantee was arranged by the American Club, in a very short period of time, through a bank and the original letter issued by the guaranteeing bank was attached to the respective court-records. Following that, the terminal operator commenced a substantive action to recover the losses which they allegedly suffered which were not quantified by them as they are awaiting the result of the judicial survey.

The judicial survey was filed by the terminal operator against the owners and a sub-charterer of the vessel and is being conducted by another Judge of the 1st instance Court also of the State Justice of Rio de Janeiro. This Judge appointed two experts, a civil engineer and a naval engineer. We appointed two technical assistants for the owners; a civil engineer specialized in the construction of dolphins and an experienced nautical officer. The parties presented questions to be replied to by the Judge's experts. It was agreed among the parties that as soon as the vessel had been judicially surveyed she would be allowed to sail.

The vessel was judicially liberated from the two proceedings, but loading commenced with a considerable delay for reasons not attributable to the vessel or the judicial proceedings.

The arrest of the vessel was granted in order to obtain the guarantee, as neither the owner or the manager have assets in Brazil, and this is permitted by the Brazilian civil procedural law as a means of obtaining the amount of an eventual future condemnation of the owners and/or the managers in the substantive action.



The substitution of the arrest for a guarantee is usual. In some situations the vessel is allowed to sail with the presentation of a Letter of Undertaking issued by the American Club when accepted by the arresting party, but in this case the terminal operator preferred a bank guarantee for reasons which are unknown to us.

Over and above those judicial proceedings in course, there is still the enquiry commenced by the Port Captaincy with jurisdiction over the port of Itaguaí, the conclusion of which will be remitted to the Maritime Tribunal, which is an administrative tribunal having the duty to indicate, if any, the party or parties responsible for facts or accidents of navigation. The indicted party is allowed to appoint lawyer to submit proper defenses. On the technical part, the Maritime Tribunal decisions are considered a strong evidence against the party considered guilty and are presumed to be correct, being possible, however, to be reexamined by the Judicial Court. Such decisions are used in substantive actions to improve chances of winning or defending a judicial claim.

The American Club instructed Shipping Consultoria (SC) to act in this matter soon after it began, and afterwards legal counsel in London, considering that the jurisdiction to judge the conflict between Owners and Charterers is London where English Law to be applied. The Club also sought advice from additional legal counsel in New York to consider possible alternatives on the case which were also discussed with SC having in view the Brazilian law.

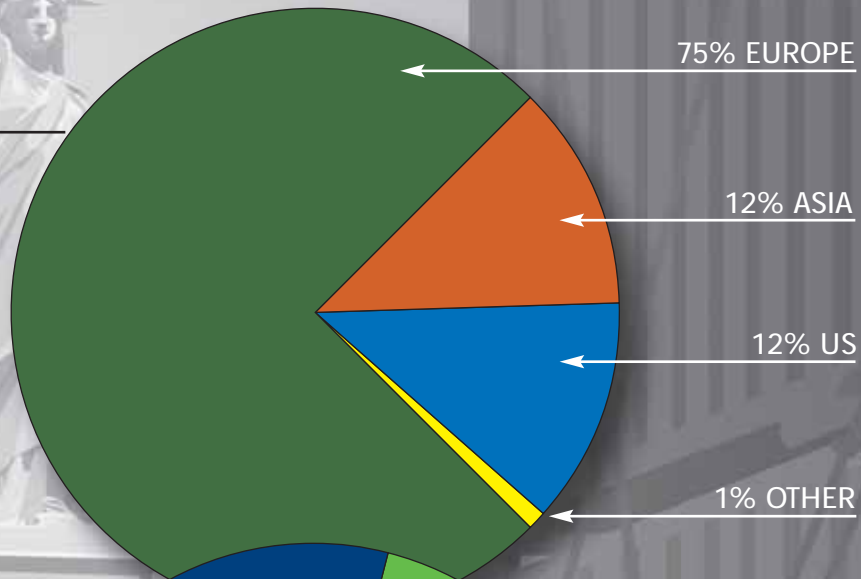
SC and the London legal counsel are acting jointly in order to construct a line of action which will not prejudice the position of the members before Brazilian justice and, in the same way, does not prejudice members' position in the arbitration which will develop in London.

This is a case which involves various legal fronts, but with one question in common: was the terminal where the vessel was scheduled to berth safe? The answer in Brazil will depend as much on the result of the judicial survey, as on what the Maritime Tribunal decides. If they conflict, which will prevail as the technical basis for the decision of the substantive action?

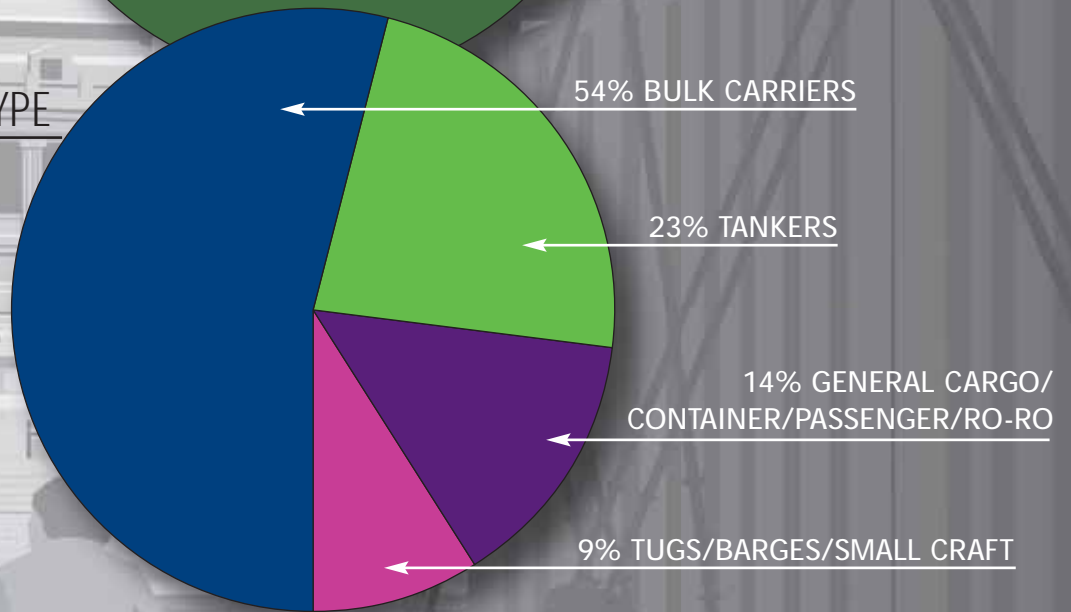
There are important points which will be decided in the future and we hope to be able to report on these at a new opportunity. 📄

ALL CLASS GT BREAKDOWN

GT BY REGION



GT BY VESSEL TYPE



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