

June 2003

19

The Standard



# marine matters



Offshore	Paying Over the Odds
Safety & Loss Prevention	Asleep on Watch
Legal Update	American Security Updates



The cover photo shows M.V. "LUCIEN G.A." passing through the Bosphorus. The 14,193 GT container ship and its three sisters, each with a capacity in excess of 1,200 TEU, are currently the 4 largest container ships under the Turkish flag.

"LUCIEN G.A." is entered in the Club by Arkas Shipping & Transport A.S.

Photograph courtesy of Arkas Shipping & Transport A.S

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## Bulletin Board

## Club News

### Chairman's Statement 2003

Your Club remains in good fettle, despite having faced many challenges this year. Some of these have simply been part of the normal insurance business cycle, others have been novelties. Although some would say that the P&I industry has changed less than any other part of the shipping business, each year sees new issues which were not foreseen twelve months earlier.

We have a Club which insures a greater tonnage than ever before, and this is not just the result of growth in the world fleet. Market share is not something we have ever actively sought, but we are pleased that as the years pass we find that members increasingly entrust their business to us. The growth in tonnage has come very largely from more ships from existing members. At a strategy discussion which took place at last October's board meeting in Tokyo, the board reviewed the relatively rapid growth in the Club's tonnage and, while welcoming members' ships into the Club, noted that the Club must be careful not to allow its resources to become overstretched by the acceptance of too many new members at a time when the reserves have reduced. The prevailing view was that growth in itself was not to be discouraged, provided that it was achieved in a controlled and measured way.

We are proud of the Club's reputation for quality membership and financial strength. However, we are far from being complacent about the difficult conditions facing the Club: in particular, the continuingly difficult investment markets and the increasing trend in larger claims, both of which have been notable features of the past twelve months. There is not a great deal more that we can do about either of these – the Club has stringent quality requirements, the investment benchmark and guidelines are prudent, and the claims have been random, often unforeseeable and from the most reputable operators – except to ensure that we do not become too stretched in our capacity to handle these challenges.

In fact, the investment result to February 2003 was a very creditable return of nearly 7%. This helped to offset an

underwriting loss, but not sufficiently to avoid a significant deficit on the year, and the reserves have been further reduced to a level which is towards the lower end of what we consider to be prudent. Indeed, the appropriate level for the Club's reserves was the other main issue debated at the October strategy review. There is no absolutely 'right' level, but the board expects the reserves, having reduced further this year, to rise from their current level to something closer to the level reached before the current negative cycle started. In reaffirming the club's AA- rating, Standard & Poor's recognized that the reserves were likely to have fallen this year, but they expected them to rise during the current year. We believe that the result of this year's renewal should make this possible.

The year was also notable for the complexity of the issues arising in relation to cover for war and terrorism risks. The US Terrorism Risks Insurance Act gave rise to a very close examination of the way in which clubs provide cover for these risks, and a rapid and somewhat inelegant solution had to be found in order to protect the clubs from the worst theoretical and unintended effects of the Act. The reinsurance of these risks was just one aspect of a difficult reinsurance renewal, during which the International Group was partly able to put into effect the results of its strategic review. There is, however, still work to be done to achieve an acceptable result from the Group's point of view, but the work done this year provides a good foundation from which to proceed, and there is now a greater understanding within the clubs of the issues which need to be addressed if more progress is to be made.

The P&I clubs are a somewhat rarefied and arcane part of the financial services industry, but they are not immune from the greater regulation which has become a feature of the modern business environment. The UK's Financial Services Authority has shown a greater interest in the clubs this year. We welcome efficient regulation and although we believe that we operate in a way which gives members good security, and that this has been recognized, we can always improve methods



and systems and are keen to raise our game in whichever ways we can.

We have welcomed to the Board this year Peter Goodfellow of Stelmar Tankers and Constantine Peraticos of Pleiades Shipping, and have welcomed back Paolo Clerici of Coeclerici. On the debit side, Peter Cresswell, Karl Timmermann, David Habgood, Jochen Döhle, Carlo Stagnaro and Barnaby Swire have retired from the board, and Antonio d'Amico sadly died last September. They made exceptional contributions to the Club's affairs, for which I would like to record my thanks.

G. D. S. Dunlop  
President and Chairman  
16th May 2003

### Tanker Surveys

The Club's underwriting procedures require ships which are aged 12 years and older to be surveyed as a condition of entry. The purpose of the survey is to assist members with loss prevention and to check for defects which may give rise to claims so that these can be dealt with. The surveys take place concurrent with ship operation, at a port convenient to all concerned. The Club is concerned that when its surveyors survey tankers, they are often unable to enter the ballast or cargo tanks, because they are not gas free or vented or the port authorities prohibit surveyors from entering the ballast tanks during cargo work. Consequently, Club condition surveys may not examine those spaces which, historically, have been associated with structural failure and claims.

This matter was referred to the Club's Safety & Loss Advisory Committee, and it has been decided that the Club should modify its surveying requirements. In future, tankers which are 17 years and older and due to be surveyed by the Club as a condition of entry will need to be presented with at least 2 cargo tanks gas free and mid portion ballast tanks open for inspection. The Managers will of course continue to make every possible effort to avoid delay to the ship.

Club underwriters will advise prospective members of the survey requirement when submitting their premium quotation. In the meantime, if further information is required, please contact the Managers' London agents.

If a company is desperate for a contract, it may offer indemnities on personnel and property that are not adequately insured and cannot necessarily be honoured.

## Offshore

### Paying Over the Odds

The offshore oil industry has recently had to pay a lot more for its insurance, causing understandable pain and unhappiness. Yet the industry has part of the solution in its hands, and is choosing not to use it.

There is little point in blaming the underwriters for the current state of the market. True, the cost of insurance arrangements may have risen four-fold in some cases, but they are still not making very much money.

One way to control insurance costs is to buy and structure it in a more efficient manner. The offshore oil and gas industry's approach to insurance is fragmented in a way that it never used to be, leading to incomplete coverage and a lack of clarity, which can only cause higher administration and legal charges.

For example, whereas ten years ago the oil company would purchase Construction All Risks cover for the entire operation, today individual contractors must make their own provisions. This is not a cost-effective way to manage risk. It is much easier for one large client, who is highly knowledgeable about the issues involved, to get the best performance in terms of coverage and price out of the insurance industry, than for several smaller contractors to buy a plethora of interlocking policy without expensive overlapping in coverage.

The current situation encourages uncertainty whenever there is an event. It is often not clear who is responsible, leaving the way open for expensive and time-consuming litigation. The buck is passed around and around, and the real winners are the lawyers.

The normal response to a hard insurance market is to increase risk retentions. Yet the trend away from collective insurance buying pulls in the opposite direction. Being generally much smaller than the oil companies they are serving, contractors, and in turn their sub-contractors, are unable to accept as much risk onto their balance sheets, and seek to insure the resulting exposures. So exposures that oil companies have agreed at a corporate level to retain, because they do not believe that the

cost benefit equation makes sense, are insured, often more expensively, by their contractors. The cost of the extra insurance then has to be factored into the overall price of the contractors' services.

Worse still, although the vast majority of oil industry contractors will always play by the rules, there are occasions when someone decides to take a gamble. If a company is desperate for a contract, it may offer indemnities on personnel and property that are not adequately insured and cannot necessarily be honoured. The indemnity that the oil company has accepted in lieu of insurance may then be worthless. An extreme scenario, but it happens leaving the well-funded operator disadvantaged by the cost of a reasonable reinsurance program. Contracts will usually ask for evidence of insurance but how often is the quality of the security really looked at?

When offshore oil fields were first opened up there was a clear environment of co-operation between the oil companies and their contractors. The oil company acknowledged that, in the overall scale of the investment, it was reasonable to take responsibility for risks that were not acceptable to contractors. Until there is a return to this co-operation, and an understanding by both parties of each other's insurance arrangements, the overall insurance bill for the offshore sector will continue to be higher than necessary.

*This article by Charles Hedgcock, Director, Offshore, of The Standard P&I Club, was previously published in Lloyds List.*



Knock-for-knock contracts can lead to rough justice at times, especially where one party has to pay for another's negligence. After some early legal setbacks they have, however, stood the test of time.

### Taking a Chance on Risk

A more fragmented approach towards risk management in the offshore industry is equally in evidence when it comes to deciding who pays for accidents to either personnel or property. As with the insurance arrangements, this approach is creating a cloud of uncertainty and adding to costs.

Knock-for-knock contracts have long provided the basis for several industry standard contracts, such as Heavycon and Towcon. Each party agrees to accept responsibility for damage to their own property and the injury or death of their own employees – even where the incidents were caused by someone else's mistake.

This type of agreement creates clarity and avoids time-consuming, expensive litigation following accidents. It also reduces the cost of insurance and avoids duplication of cover by identifying the risks each party needs to insure. Because the offshore industry invests billions of dollars in its operations, the potential savings are substantial.

Knock-for-knock contracts can lead to rough justice at times, especially where one party has to pay for another's negligence. After some early legal setbacks they have, however, stood the test of time. As one English Commercial Court judge recently remarked, they provide "a crude but workable allocation of risk and responsibility."

In the last five years, the offshore industry has moved away from or diluted the knock-for-knock concept. This reflects, to a significant degree, the desire of oil companies to move risk off

their balance sheets. Contractors are increasingly expected to pick up the tab if it can be shown that they or their personnel have been guilty of gross negligence.

The trouble with this type of modification is that, though the parties may agree in principle what they mean by 'gross negligence', this is often of no use when there is a real incident. The courts in England have several times addressed this issue and Mr Justice Mance summed up the issues succinctly in a High Court ruling (*Red Sea Tankers Ltd v Papachristidis* 1997 2 LLR 547 (*"The Hellespont Ardent"*)). There is, he concluded, no one single determinative factor. All the circumstances must be weighed up to ascertain whether a negligent act or omission merits the designation 'gross'.

In plain English, that means you do not know who has to pay until you have dragged the case through the courts. Good news for lawyers, but expensive and massively distracting for senior executives, who must devote huge amounts of time to the resulting litigation. This inevitably feeds through into costlier insurance premiums and higher contract costs; it makes business planning more difficult and it takes management away from what they are paid to do. To cover themselves, some contractors purchase insurance for claims arising out of their gross negligence, but the premiums are high and the limits usually low.

Of course, it is easy to see why some commercial entities wish to dilute the knock-for-knock concept. In our experience, however, such changes do not improve risk management. Any reputable offshore contractor will do all he can to ensure that his personnel observe best practice. Reputation is everything. In the small world of the offshore oil industry, one major incident can destroy your business.

Knock-for-knock contracts, on the other hand, provide clarity and simplicity. Their erosion will cost the industry far more than it gains.

*This article by Barbara Jennings, Director, Offshore Claims, at The Standard P&I Club was previously published in Lloyd's List.*





## Contract Review Training

The Club reviews contracts signed by members in the offshore industry in order to establish whether the Club can cover the member's liabilities under the contract without requiring contractual extensions to the P&I cover. To be acceptable a contract must incorporate a knock-for-knock liability regime under which each contracting partner takes responsibility for his own property and personnel. However, the contract may still be excluded from full Club cover if it contains other unacceptable provisions, for instance exclusions in respect of gross negligence or a poorly worded waiver of subrogation clause.

The Club has held regular training sessions for claims executives and underwriters involved in contract review to help them to understand what features make a contract acceptable for full cover. These sessions are now being opened up to members in order to help them to identify which contractual provisions might prejudice their P&I cover.

The next session will take place on 17th June 2003. It will be held in the morning and will take about half a day. Members are welcome to attend and places will be allocated on a first come, first served basis. Other sessions are planned for later in the year.

Anyone interested in attending this or a later training session should contact **Charles Hedgcock**, Director, Offshore, on +44(0) 20 7522 7459, [charles.hedgcock@ctcplc.com](mailto:charles.hedgcock@ctcplc.com), or **Barbara Jennings**, Director, Offshore Claims, on +44(0) 20 7522 7429, [barbara.jennings@ctcplc.com](mailto:barbara.jennings@ctcplc.com).

## The Standard Offshore Forum 2003

The date for this year's Offshore Forum is 6th November. Members should contact the Offshore Team if there are any topics which they would like to see addressed. Presentations from last year's Forum can be found on the Standard Offshore website at [www.standard-offshore.com/features](http://www.standard-offshore.com/features).



Codeine is a standard item in ship's medical chests. Ships medical chests are generally made up from a number of sources, and the labelling of medications does not follow an international standard.

## Safety and Loss Prevention

### Medicines and Medical Advice Textbooks Carried on Board

The Club has settled a claim by a crewmember for back injuries, sustained when he tripped and fell whilst taking reefer container temperatures. The man had complained of a fever and had been prescribed codeine. Codeine, as the phosphate or sulphate, is a widely used analgesic, or painkiller, related to the opiates. It is somewhat addictive, but, more to the point in this case, it can cause drowsiness, which is just what happened here – the man stumbled and fell, injuring his back.

It was argued, successfully, on behalf of the crewmember, that he should not have been given this type of duty whilst being treated with codeine, because it is well known that codeine causes drowsiness.

This was the first time that the Club has received a claim of this type.

Codeine is a standard item in ship's medical chests. Ships medical chests are generally made up from a number of sources, and the labelling of medications does not follow an international standard. The British labelling of codeine, for example, does refer to drowsiness as a hazard, but some samples of codeine from ships medical chests, examined on a random basis at Felixstowe, did not refer to drowsiness as a hazard. We thought it would be interesting to compare the entry for "codeine" in the two medical textbooks most commonly carried aboard ship, and in a third book recommended by a member of the Club's Safety and Loss Control Committee.

#### **The Ship Captain's Medical Guide**

22nd Edition, 1999, published by the UK Stationery Office.  
ISBN 0 11 551658 1

232 pages. This book is an old standby and will be familiar to very many people. The first edition was published in 1868, but the content and layout changes substantially with each edition, so out of date copies should be disposed of and replaced.

The current edition uses line drawings rather than photographs and is written in admirably clear, simple, English. The entry for "Codeine phosphate" in the Index refers to its use for backache, boil in the ear, coronary thrombosis, gout, head injuries, meningitis, twisted testicle and urticaria, but there is no reference to the sedative tendency of codeine in the book, which does not contain a separate section on materia medica.





**International Medical Guide for Ships**

2nd Edition, 1988, published by the World Health Organisation.  
ISBN 92 4 154231 4

368 pages. This book is really an alternative to the Ship Captain's Medical Guide, and is rather similar, with clear line drawings. The text is not quite so easy to follow, but by no means difficult. It is rather more comprehensive, and includes a list of medicines to be carried aboard ship and a discussion of them. The entry for codeine reads

*"Codeine Sulfate tablets, 30mg*

*Use: (1) to relieve coughing; (2) in diarrhoea*

*Adult Dosage: For the persistent and severe coughing accompanying severe respiratory disorders, give half a 30 mg tablet as often as every two hours, if necessary. This time interval should be lengthened as soon as the cough is controlled. Codeine sulfate should be discontinued as soon as the cough is relieved.*

*In diarrhoea, 30 mg may be given, repeated after 4 hours if necessary*

*Caution: Codeine sulfate is an addiction-producing drug, but has less addiction liability than morphine. It may produce nausea, vomiting, constipation and drowsiness.*

*Warning: A controlled substance. An exact record of its use must be kept."*

The third book, recommended by a member of the Safety and Loss Control Committee, is

**Marine Medical Guide**

3rd Edition, 1999. PharmaSea Australia Pty. Ltd, Melbourne.  
ISBN 0 646 35861 8

This is a different type of book. It is intended as a complement to the two books listed above. It is essentially a materia medica, with a long section of "drug narratives" and a shorter

section on diseases likely to affect seamen, which is more descriptive than diagnostic in intent. There is a section on splints, illustrated with photographs.

The section on Codeine Phosphate reads:

**"CODEINE PHOSPHATE**

**Group:** 2 Gastro-intestinal

3 Analgesics and Antispasmodics

6 Respiratory System

**Indications:** Cough suppressant and treatment of chronic non-specific diarrhoea. Mild to severe pain.

**Contra-indications and Precautions:** May cause addiction, respiratory depression, constipation and bronchoconstriction. Avoid alcohol as Codeine in higher doses can cause sedation.

**SEDATION ALERT – alcohol must be avoided.**

**Recordable**

**Dosage:** Adults- 10-69 mg four to six times daily, not more than 300mg in 24 hours.

**Extra notes:**

Codeine is structurally related to morphine (derived from opium). Codeine is also available as a Cough Linctus for the suppression of cough.

Naloxone can be used as an antagonist or antidote to overdosage of Codeine or Morphine (opiate based) products."

We endorse the recommendation of the Safety and Loss Control Committee that this book forms a very useful companion to either of the first two, and should be carried on board.

People very often look at ship handling as a sort of black art, best learned by practice, and consider a good ship handler to be someone who “flies by the seat of his pants” and is born, not made.

## Dock Damage

When P&I Clubs first offered cover for “damage to fixed and floating objects” such as piers, berths and docks, claims were seldom very large. Ships were small, and claims usually related to damaged fendering.

Today this type of claim is often very expensive, because ships have grown larger and port facilities are more complex and expensive.

The Safety and Loss Control Committee have recently had to consider three cases of this type. In two cases, the entered ship was berthing under pilot’s advice and with tugs secured. A great deal of work has been done to try to improve the working relationship between the Pilot and the ship he is assisting, but clearly mistakes still happen.

A Suezmax tanker was proceeding to her designated berth in a North European port with two pilots on board – one was a trainee. Four conventional tugs were in attendance; one attached forward, one aft, and two standing by. The tanker, which was in ballast, stopped 200 metres from the berth and parallel to it and the two unsecured tugs started to push her alongside, whilst the attached tugs controlled the approach. When less than 50 metres from the berth the forward attached tug released the towline and the tanker’s bow swung to starboard and hit the berth, although the port anchor had been dropped.

No explanation for the tug’s action has been forthcoming; conceivably it might have been at risk of girting. No explanation for the two other tugs continuing to push has been received.

As is usual, the Pilot was communicating with the tugs in their common language and he did not repeat his orders in English to the ships’ staff. It is important to remind Pilots to repeat their orders to tugs in English so that the ship’s staff can understand what is being done. If the Pilot forgets to do this, he should be reminded.

In another case, a car carrier was berthing at an African port. The Master had advised the Pilot that his ship’s bow thruster was not operational, although the stern thruster was.

There was a fresh wind blowing onto the berth. The first

attempt to berth failed and the ship returned to the outer harbour for a second attempt. Two tugs were in attendance but not secured. As is usual with car carriers, the ship had a lot of windage and her bow was blown off towards the berth. Both anchors were dropped but she struck the berth at an angle of 45 degrees. Her bulbous bow penetrated the sheet piling of the berth face, something that often happens, causing very serious damage.

This is typical of a type of case which the Club has seen a great many of – cases where the Pilot appears to be over-confident and perhaps even “flashy” in his ship handling, but where he has not given sufficient thought to the type of ship and to her actual state – a car carrier is bound to react quite differently to a tanker, bulk carrier or container ship, and if she has no bow thruster things will be very difficult.

Both of these cases are quite typical of claims that we have reported and commented on over the years. So was the third case, in which an LNG carrier damaged a shore gangway.

Although safety standards aboard LNG carriers are very high, these ships typically operate on the same route to the same schedule for many years. This does sometimes lead to over-familiarity, carelessness and inattention. Such was the case here – the crew hardened up the shore lines after the ship completed discharge. Unfortunately the lines had been allowed to go slack as the tide fell. As they were hardened in, the ship, now in light condition, rolled, damaging the shore gantry, which was an elaborate turntable mounted gantry.

The standing instructions should provide for moorings to be checked every hour, and more often when there is a rapid change in tidal height and in the ship’s draft. Whilst the bosun, a quartermaster or a night watchman should be responsible for this task, the officer of the watch should check that it is actually done. Very often, it is not. In this case the problem was that the lines had been allowed to go slack to such an extent that the ship moved back into the berth, wrecking the gangway gantry.

The two cases involving ships berthing under pilot’s advice

and with tugs attached illustrate points that have been commented on before. In both cases, the ship's anchors were dropped promptly, but an anchor dropped at short stay will not hold; it will slow the ship by dredging over the bottom but will not stop her. In the first case, the Pilot should have ordered the tugs to stop pushing at once. In the second case, the Pilot, knowing that the bow thruster was out of use, should have made one tug fast before approaching the berth.

These cases are so frequent that the Club is producing a book on the subject of dock damage. The Nautical Institute has published an excellent book called "The Shiphandler's Guide", by Captain RW Rowe, aimed mainly at trainee Pilots, which we recommend should be read more widely, but there is no book dealing specifically with berthing.

People very often look at ship handling as a sort of black art, best learned by practice, and consider a good ship handler to be someone who "flies by the seat of his pants" and is born, not made. Certainly some people are better than others, but ship handling is simply a question of understanding physics.

Until very recently, ship simulators have not been very good at simulating berthing manoeuvres. This is because the equations on which the mathematical models of ships, used in the simulator, are built become very much more complex as the ship approaches a dock or pier, particularly in a current or tidal stream. This is now starting to change, so that it will eventually become possible to practice berthing, like collision avoidance, on a simulator. At the moment, however, people should be very wary of practising berthing manoeuvres on a simulator, because the computer running the simulator is ignoring the current effects of the proximity of the berth itself, which appears on the visualisation but not in the Eulerian equations governing the motions of the digital model!

Scale models on a lake provide excellent training, because water is water, regardless of scale, but few officers get a chance to try this.

The situation is made much worse by the traditional disposition

of a ship's Deck Officers during berthing. Traditionally, the Master is on the bridge with the Third Officer, the Mate is forward and the Second Officer is aft. This arrangement has come down to us from sailing ships, where the Mate needed to be forward to organise the crew's work with the catted and fished anchors and at the capstan or handspike windlass.

It is not the best arrangement, because the Chief Officer, who will, all being well, soon have command of his own ship, gets no experience of ship handling! Furthermore, should anything happen to the Master during the critical manoeuvres of berthing, the Third Officer is the least capable of taking over command instantly.

Some Members prefer to have the Chief Officer on the bridge during berthing, with the Second Officer forward and the Third Officer aft. This arrangement is much more sensible for today's ships, which are much larger, and, importantly, it allows the Chief Officer to gain experience of ship handling. In the unlikely event that some misfortune befalls the Master, the C/O is in the best position to take over immediately.

Where a berthing manoeuvre is likely to take a long time, as for instance where the berth for which the ship is making lies a long way up a river, it is advisable to make arrangements for officers to be relieved, and in such a case the Bosun should be well able to stand in for an officer, provided he has been carefully briefed and there is no language difficulty. Members are reminded of the 'Golden Rules for Berthing'.

1. pilots board early in good time and are fully briefed in ship handling characteristics before they are given control;
2. pilots should be supervised and the ship's tack marked on the chart;
3. pilots should be asked to repeat orders to tugs in English;
4. when the ship approaches a berth, her speed should be minimum but sufficient to maintain steerage. Tugs should be attached and able to control the ship should this be necessary;
5. anchors should be walked back and ready to release.



Risk assessment will not eliminate every accident or injury but it will raise the awareness of crew to the dangers that surround them. To be forewarned is to be forearmed.

### Risk Assessment: Very Important Because it Prevents Accidents

The Club has and will continue to promote risk assessment, a process that involves hazard identification and categorisation along with a review of operational procedures so that such hazards are reduced to the lowest possible level.

The Club promotes risk assessment because we believe that it is the only technique which if professionally applied will help to prevent accidents. Through application of these techniques, the Club is setting out to prevent accidents caused by unsafe working, unsafe procedures, and unsafe design.

The most important element within risk assessment is the systematic review of hazards followed by the development of operating procedures or design changes to reduce or eliminate them. Although it will not be possible to eliminate them all, it should be possible to reduce their implicit danger.

The following two accidents illustrate what we are trying to prevent through risk assessment. In the first case, a visitor to the ship was killed when a heavy weight fell from a stores crane. The location of the crane and its marshalling area were directly above an area where people were likely to congregate. Consequently, there was an injury hazard. In a risk assessment this should have been categorised as 'extremely dangerous' and subsequently control procedures would have reduced the threat.

In the second incident, a crewmember was injured when he slipped and fell. It was common throughout the ship for potentially slippery surfaces to be treated with non-slip coatings. However, this particular surface had not been identified as hazardous and consequently preventative measures were not taken.

Risk assessment will not eliminate every accident or injury but it will raise the awareness of crew to the dangers that surround them. To be forewarned is to be forearmed.



## IMO Rules on Bulk Carrier Changes

Members will be well aware that bulk carriers built after July 2006 which are over 150 metres in length, which means most seagoing bulk carriers, will have double hulls, like newer tankers. This is described as a “double side skin” design, because, of course, bulk carriers already have double bottoms, unlike single skin tankers.

It is likely that the side compartments of future ships will be one metre wide, with a clear space for access of at least 60 centimetres. The details will be settled by the International Association of Classification Societies (IACS) and published as a Unified Requirement, governing all IACS member Societies. IACS will also determine the scantlings required.

The side shell space cannot be used for fuel or cargo, but no decision has yet been made on whether it can be used for ballast water.

A calculation suggests that a “Dunkirkmax” Capesize bulk carrier, of say 170,000dwt, would lose some 2,000 tons of usable deadweight, if built with such side compartments. This is within the 3% margin of error usually allowed. She would be quicker and easier to discharge as the cargo would not hang up on the frames, and the frames would not be vulnerable to grab and bulldozer damage. However, it would be unwise to assume that the holds will be completely clear – the Australian hold ladders have to go somewhere! Furthermore, the benefits of such a quick discharge (some stevedores in the port of Rotterdam have estimated that a Capesize discharging coal might be finished 24 hours earlier) will inure to the charterer, rather than the owner, in many cases.

The IMO has also settled the matter of transverse bulkheads on future ships – they will be able to withstand the adjacent hold being flooded. Many people who are not closely concerned with naval architecture have assumed, quite wrongly, that this was always the case. It was not. However, the opportunity to require a double skin “sandwich” bulkhead, rather than a corrugated one, was not taken.

Cargoes are much more likely to remain near to the temperature at which they were loaded when carried in a

double skinned ship, although the effect of the heating of fuel oil carried in double bottom tanks will continue as now.

There will be new regulations concerning forecastles and the fittings on them. IACS is also to deal with these, by way of two Unified Requirements. One concerns the strength and location of fittings on the foredeck, inspired by the DERBYSHIRE case, where it is thought that a booby hatch on the forecastle, which had almost certainly been dogged down on a rubber gasket as part of routine heavy weather precautions, was sprung open by the force of the sea, causing the compartment under it to flood. The other will call for the return of the forecastle, or some equivalent means of protecting the forward part of the weather deck and its hatch covers from boarding seas. Forecastles were mandatory under the old Load Line Convention, but the 1966 Load Line Convention allowed a modest increase in freeboard at the bow in place of a forecastle, under the “B 60” rule.

There are new regulations governing hatch cover and hatch coaming strength, as well.

Again, this is a revision of the 1966 Load Line Convention, which stipulated that hatches must withstand the pressure exerted by 1.65 tons of water column, i.e. hatches must be able to withstand a loading of 1.65 tons per square metre. Greater strength is now required.

The new rules say plenty about existing ships. The legal implications may be significant.

*Continued over*



Bulk carriers are to be equipped with “rapid means of escape”, and owners will have to give their crews “advice” on the advisability of early abandonment.

*First, all bulk carriers will be compelled to carry immersion suits for all crew members, with effect from July 2004.*

Immersion suits are expensive, and there is likely to be huge demand for them, so owners of bulk carriers need to consider how to obtain sufficient suits at a reasonable price. Members owning bulk carriers are recommended to order this equipment well in advance – it is an item which Port State Control inspectors are likely to “target” and there are relatively few suppliers, so there may be a long waiting time for deliveries placed nearer the deadline.

*Second, by July 1 2004, all bulk carriers must be fitted with approved water ingress detectors and alarms, in all holds.*

Once again, given the number of ships involved, there will be a rush to buy and fit this equipment.

There is a problem here – the design of the type of water ingress detector to be fitted has not been settled. It can be seen that this equipment must be extremely robust and reliable. This equipment must be able to operate in a cargo hold that may carry anything from dense ores to grains to bulk cement.

The legal consequences of failing to comply with these new rules are simple – the ship will be subject to detention by Port State Control inspectors in the event of non-compliance, and in the event of a casualty exacerbated by non-compliance there may well be implications for insurance cover, but there are other, more complex aspects of the new Rules.

Bulk carriers are to be equipped with “rapid means of escape”, and owners will have to give their crews “advice” on the advisability of early abandonment. This requirement is tantamount to an admission, by the IMO, that bulk carriers are more dangerous than was thought. Whilst bulk carriers that suffered sudden structural failure have killed many people, perhaps minutes after a problem became apparent, the implications of advising a crew to abandon ship because of a seemingly minor problem, perhaps in bad weather, will give rise to legal issues. The owners of cargo aboard a ship thus abruptly abandoned will certainly have an opinion about it.

New ships will carry free fall lifeboats – the desirability of this measure is surely beyond doubt – but existing ships will not be retrofitted. Such a retrofit would be extremely expensive. This means that those ships which seem most likely to sink very suddenly, that is to say those single skin bulk carriers built with light scantlings and with much use of higher tensile steel, some of which may indeed have passed out of the enhanced inspection regimes of the major Classification Societies, will probably continue to have lifeboats that can only be launched slowly and with difficulty.

The IMO will, by way of a formal Resolution of the Maritime Safety Committee, urge its member states to apply the new





IACS Unified Requirements for bulk carriers whether the ship concerned is classed with an IACS member Society or not. It is safe to assume that most nations will do so, thereby giving the IACS Unified Requirements an unusual legal status.

There are FDD implications. The new regulations will include “guidance” to owners, by way of a Maritime Safety Committee Circular, on the application of SOLAS and Load Line requirements. This sounds quite simple, but it is not! Most bulk carriers are described in their Charter Parties as their builders described them, so far as their cargo capacities are concerned, but these descriptions apply to “ideal” conditions and cannot be attained in practice. It has become commonplace in the bulk carrier business for a blind eye to be turned to certain inconvenient, and hitherto unimportant, details of loading conditions and so on. The owner relies on the Master to keep the charterers happy and the ship safe. Clearly, with the IMO now taking a close interest in this subject, issues of “unseaworthiness” are bound to become more frequent, as are allegations of “mis-description”.

Finally, IACS has moved to standardise loading conditions. The importance of this may not be immediately apparent, but it is very important. In recent years there have been altogether too many cases of ships that look good on paper, but which cannot operate safely in practice with sufficient flexibility – ships that cannot, for instance, sail part laden between one port and another, or which cannot load some cargoes. It is an unfortunate fact that the traditions of the bulk carrier industry very often lead to departures from the requirements of overly restrictive loading manuals.

It is not likely that the new type of bulk carrier will attract a significantly lower rate of premium for hull and machinery or of call for P&I cover. This is because the effects of the modifications are aimed at reducing the risk of total loss. That risk is only a small element of the total package of risks that are covered, and the modifications by no means eliminate all risk of total loss – a new style bulker can run aground, have a collision or catch fire just as readily as an “old style” ship!

### CTC Technical

We are pleased to report that the Managers have integrated their P&I safety and loss prevention team into CTC’s technical unit. The team will continue to carry out its P&I work as before but within a unit with wider technical capabilities. CTC Technical’s activities include loss prevention, risk assessment, engineering, surveying, auditing, technical appraisal and expert witness work, in the marine, ports and terminals, energy, aviation and non-marine fields. The unit coordinates the expertise of about fifty technical staff in a number of locations around the world.

For marine enquires please contact: **Eric Murdoch** on +44(0) 20 7522 7440, [eric.murdoch@ctcplc.com](mailto:eric.murdoch@ctcplc.com)



Surveyors who were appointed by the Club to investigate the incident reported that the cause of damage was inadequate use of dunnage during loading.

### Cargo Stowage

A 1500 tonne general cargo ship was loading curved concrete segments, for use in the construction of a railway tunnel. The segments were being shipped from Gravesend to Copenhagen. Delivery would involve a voyage across the southern part of the North Sea. It was February. The charterer, who had contracted the ship for more than one voyage, had devised the system for stowage. A charterer's representative would be present during the loading. However, under the terms of the charter the ship's master was responsible for supervision of the stevedores and for stowage.

The segments were loaded upright, sitting on their ends and nesting together. They were loaded across the ship in parallel rows. In each alternative row the segment direction was reversed so that the curvature of the segment faced in opposite directions from row to row. Dunnage was placed at the ends and between rows.

The ship sailed and immediately encountered very bad weather in the southern North Sea. Strong North Westerly winds blowing to force 8/9 caused the ship to roll and pitch heavily. Loud crashes could be heard coming from the cargo hold and when the ship settled with a permanent starboard list, the Master realised something was wrong. They deviated to Harlingen where examination of the cargo found it had shifted and was

extensively damaged. There were no facilities at Harlingen to discharge and re-stow cargo, and it was necessary to return to the load port, after first putting sand bags around cargo to stop further movement. When the ship arrived back at Gravesend and cargo was discharged, 348 segments were found damaged of which only 128 could be repaired.

Surveyors who were appointed by the Club to investigate the incident reported that the cause of damage was inadequate use of dunnage during loading. The segments, which were difficult to manhandle, had been stowed with gaps between them and only the minimum amount of dunnage had been placed in these gaps. Indeed, most of the dunnage had been placed at the ends of each row where cargo touched the ship's inner shell. Consequently, as the ship rolled the segments were able to move from side to side and crash together. The master who had responsibility for supervision of cargo stowage had not made sure that the segments were stowed tightly together. He should have required additional dunnage in the gaps between segments. The ship had carried this cargo before and the master would have been familiar with the requirements for loading. Regardless of the potential dangers, the ship left port with poorly stowed cargo. This can only be trusting to good luck.



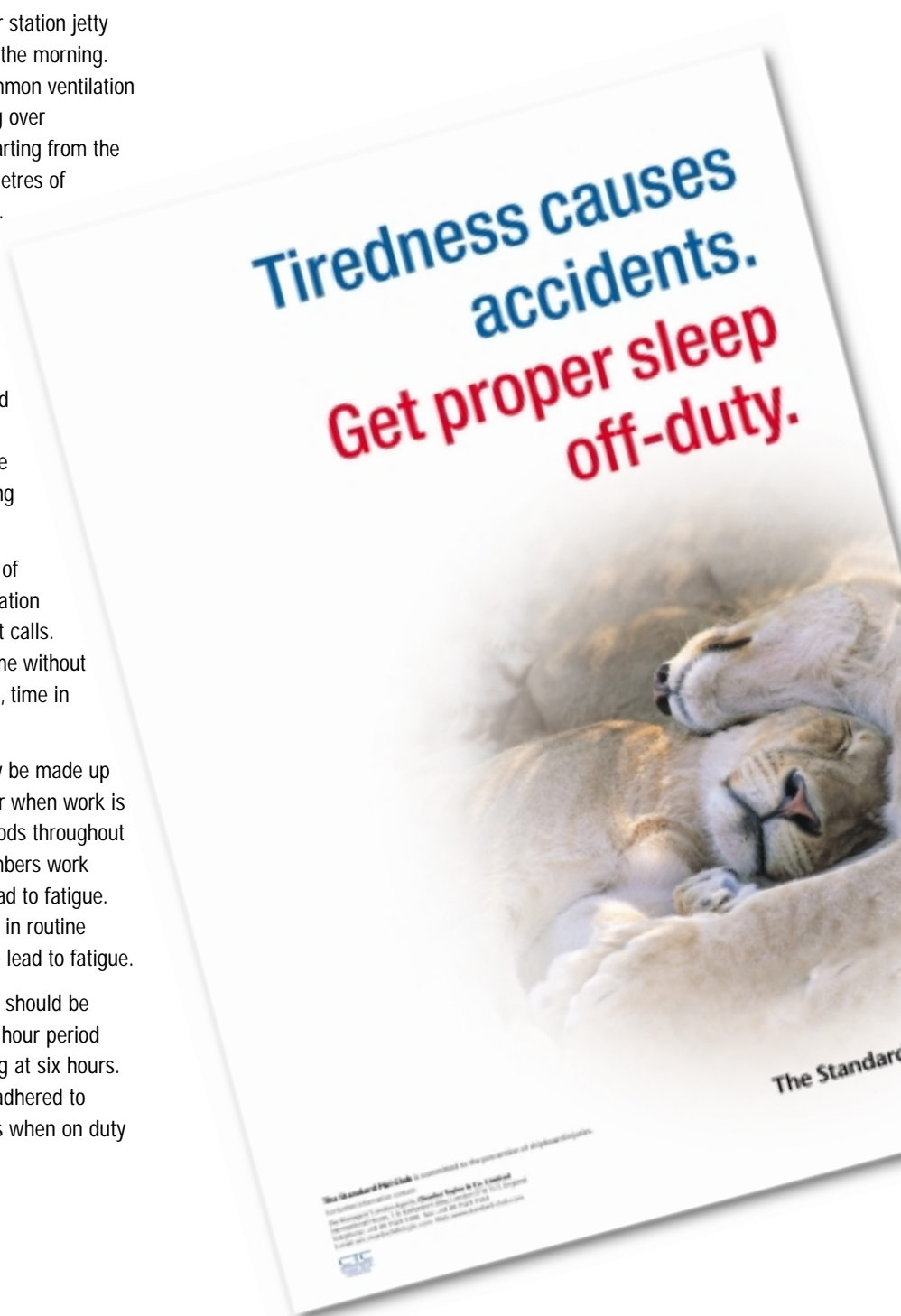
## Asleep on Watch

A motorised tank barge was alongside a power station jetty loading undyed gas oil. Loading had started in the morning. Tank access hatches were closed, and the common ventilation line was open, to prevent tanks from becoming over pressurised. The loading sequence involved starting from the aft, working forward, and initially pumping 2 metres of cargo into each tank before filling all the tanks. This procedure was followed. With loading proceeding according to plan, the chief officer then left a deck hand to supervise loading while he continued with other duties. However, instead of monitoring the tank-filling rate the deck hand went below to his cabin and fell asleep. It was not until the high level alarm sounded and gas oil was seen pouring from the ventilation line that someone realised something was wrong.

The deck hand claimed he fell asleep because of fatigue having worked long hours during navigation and because the barge had made frequent port calls. Although the maximum length of navigating time without a rest period should not exceed fourteen hours, time in port is not normally considered.

Fatigue is accumulative. Loss of sleep can only be made up by extra sleep. However, fatigue does not occur when work is structured so that there are adequate rest periods throughout the day. It has been found that when crewmembers work during a rest period that this can commonly lead to fatigue. Disruption to rest periods because of a change in routine commonly associated with a port call, can also lead to fatigue.

The STCW Convention recommends that there should be minimum of ten hours rest in any twenty-four hour period with a least one consecutive rest period lasting at six hours. When these minimum periods of rest are not adhered to fatigue can and does occur and crewmembers when on duty are liable to fall asleep.





A defect is defined as a malfunction, or failure to follow safety regulations, in relation to the ship and its equipment if used for escape, embarkation or disembarkation of passengers or for propulsion, steering, navigation, mooring or in berth or in relation to damage control after flooding.

## Special Report

### Athens Convention

Changes to the international convention that covers liabilities for injuries to passengers were adopted in November 2002. As the 2002 Protocol to the Convention, these will come into force 12 months after ratification by 10 states.

The previous convention set limits of liability with the claimant having to show negligence on the part of the shipowner (or carrier) or its servants. The amendment changes the nature of the convention by including:

- A provision for compulsory insurance of at least 250,000 SDR per passenger, with ships having to carry certificates of insurance and allowing direct claims against the insurer
- A component of strict liability
- Differing liability regimes for claims arising from "Shipping Incidents" and those from "Non-Shipping Incidents"
- Changes in the burden of proof
- Increasing the overall limit of liability to 400,000 SDR's within two-tiers but with an opt-out allowing states to increase the limits
- Claims are still time barred after 2 years. However long stop provisions would allow latent claims up to 5 years after disembarkation. Implementation of this longstop provision would require a further change in English law.

For death or personal injury to a passenger, the carrier is strictly liable for injuries arising from a Shipping Incident up to 200,000 SDR unless the carrier proves the injury was caused by war, exceptional events or by a third party with intent to cause the incident. For the portion of the claim from a Shipping Incident over 250,000 SDR, the carrier is liable unless he can prove that the incident was not caused by his own fault or neglect but the overall limit is 400,000 SDR.

The 400,000 SDR limit also applies to Non-Shipping Incidents but in this case it is the passenger who needs to prove fault or neglect for the accident by the carrier.

The convention defines a "Shipping Incident" as arising from collisions, groundings, fire, capsizes, shipwreck and explosion

aboard ship and defects in the ship. A defect is defined as a malfunction, or failure to follow safety regulations, in relation to the ship and its equipment if used for escape, embarkation or disembarkation of passengers or for propulsion, steering, navigation, mooring or in berth or in relation to damage control after flooding. The objective is to put the burden of proof on the claimant only for injuries arising from the hotel functions of the ship, e.g. tripping over a shopping basket in the duty free shop or a waiter spilling hot coffee over a passenger. The definition of a shipping incident is helpful (absent in the current Convention) but still leaves significant scope for litigation, particularly over compliance with safety regulations.

Other limits are increased to:-

- 250 SDR for loss of or damage to cabin luggage. The carrier is liable unless he proves the incident was not caused by his fault or neglect but carrier's liability is presumed in shipping incidents.
- 12,700 SDR for loss or damage to a vehicle and its contents but terms can be agreed to apply a deductible up to 330 SDR. Liability will be presumed unless the carrier can prove otherwise in both Shipping and Non Shipping Incidents
- 3,375 SDR for luggage but terms can be agreed to apply a deductible of 149 SDR. Again liability will be presumed unless the carrier can prove otherwise.

In the UK the legislation to enact the 1996 Protocol of the 1976 Limitation Convention sets the overall limitation of liability for death or personal injury claims on passenger ships to the number of passengers multiplied by the Athens convention limit. This will probably be amended when the new Athens limits come into force. It is understood that the UK and other countries are politically hostile to any limitation for passenger claims and they may opt to set higher limits. Also the USA was never party to the convention but might be persuaded by the higher limits and the opt out clause to sign up.

*We would like to thank the Personal Injury and Employment Unit of Hill Taylor Dickinson for permission to reprint this article from the March 2003 edition of Shipping Bulletin.*

## Surveyor's Notebook

### Candles in Void Spaces

Enclosed spaces are dangerous places in which to enter – well known and documented, but what we may not realise is that some enclosed spaces are even more dangerous than others. One good example is void spaces. Void spaces in dry cargo barges are considerably more dangerous than void spaces in a conventional seagoing ship. This is because barge void spaces are often wet with seawater from hull leakage or from condensation, which allows oxygen-consuming corrosion to take place. Also, there is often only one access manhole to a barge void space and no ventilation pipe. It is almost impossible to produce a through flow of air through a barge's void space. The result is that even though the space can be ventilated by forced air blowers, there may remain pockets of foul air which the blower cannot reach.

Recently, an engineer mentioned that when closing void space manhole covers some repairers place lighted candles in the space. The aim being to burn away the oxygen in the void space air and so prevent corrosion. Whether this practice continues I have no idea but the message is simple, if you see burnt candles in a void space then do not enter the space, except after properly ventilating the space and following to the letter enclosed space entry procedures. The Standard P&I Club recently issued a safety poster about enclosed spaces where they advised not to use your nose to test the atmosphere, use an oxygen meter. A copy of the poster is shown.

### Hatch Cover Testing

Hatch cover testing is not an exact science because even if test procedures are followed to the letter by skilled experts using the correct equipment, then the tests may fail to identify poor sealing. Hatch covers are designed to prevent the passage of water into a cargo hold and are designed to be weathertight. Although a definition of weathertight exists, most people incorrectly think it means minor leakage is allowed. However, it is generally accepted that water can penetrate a hatch cover gasket and as a result hatch covers are fitted with internal drainage channels which allow water to drain away.

The problem with hatch cover tests is that they are made when the ship is stationary. When a ship encounters bad weather during a voyage both the ship and the hatch covers move and often gaps appear between the compression bar and watertight gasket. In addition, water in drain channels can fall into the hold. For this reason, it is important to remember that hatch tests will only give an indication of whether hatch covers are weathertight. It is important to check panel alignment and to check for defects, as it is to carry out a physical test. Our surveys have shown that cross-joints and hatch corners are the most likely places where leakage occurs. Careful application of cross-joint wedges is essential.



### Getting the Message Across

When the great and the good gather around a table to discuss ship safety, a lively and interesting debate ensues. To listen to a debate about ship safety by senior industry people is well worth any time or money spent on attending. Ship safety is a practical subject and the prevention of accidental injury involves application of simple procedures for loss prevention, mostly by education of the dangers and through training in safe working. It is interesting but senior industry figures will comment on the gap between what people should do and what they do do. How big is the gap? This is the gap between the safety object as promoted by the management company and the safety procedures applied by the simplest seamen on a ship. Sadly, that gap is sometimes enormous, which is why it is essential to promote safety and loss prevention by every available means. It is also important to have safety discussions on board ship so that all seamen can become involved in the safety debate. Managing safety is not only about written safety instructions and procedures, it is also about hazard identification and defect reporting.

### What's Left

Surveyors who carry out condition assessment surveys will include a hull structural examination as part of their survey. When examining a ship's hull an attempt is being made to quantify the fitness of the hull by evaluation of wear and tear. Typically, a hull will corrode, or receive physical damage, or be affected by cracking. Initially, the surveyor will perform a visual examination during which he should detect physical damage, serious cracking and corrosion. Physical damage and cracking can be assessed in this way, but not corrosion because when corrosion is evaluated by visual methods, the surveyor will only see what has corroded, rather than what is left and not corroded.

During ship construction an allowance is made for corrosion which will take place during the life of the ship. The allowance is made in the form of an increase in the thickness of plate above the minimum required for strength purposes. Classification societies require shell plate renewal when

plating thickness is reduced, for example, by 25% of the original thickness. However, the difficulty experienced when measuring corrosion for an entire plate is the fact that corrosion is never evenly distributed. For this reason it is impossible to estimate the thickness of a flat plate visually and the only reliable method is to measure the plate's thickness in a number of locations with an ultra sonic thickness determination meter and to then decide if replacement is necessary.

Thickness determination meters are relatively inexpensive to purchase and are easy to use. It is essential to use them when performing a structural examination.

### Blind Date

The thought of a blind date is sufficient to send most people running for cover. Yet when visiting a ship for survey, the surveyor is never sure of what he will find until he arrives. That is why it is so important to carry out as much research as possible before leaving the office. Typically, check the ship register books for the ship details, the owners and / or managers, which classification society and P&I club the ship is entered with and also look at the port state detention lists. At times a review of the classification society records is beneficial. This information if used sensibly can give a clear picture of what to expect. Surveys should never be a blind date.





Proceedings could not be commenced in England because the carrying ship and sister ships had not come within the jurisdiction. Proceedings could not be pursued to a conclusion because of the jurisdiction clauses in the bills.

## Legal Cases

### *The “JUTHA RAJPRUEK”*

When P&I clubs issue letters of undertaking as security for claims against shipowners, it is common to specify the court and country in which the claim will be determined. If no agreement is reached the point may be left open and the undertaking will say that the claim will be heard by a “competent court”. This case casts light on the meaning of that phrase.

There were claims against a shipowner by cargo interests. A number of different types of bill of lading had been issued but all provided for jurisdiction of courts in countries other than England. The shipowners’ P&I club issued a letter of undertaking in the usual form by which they agreed to pay whatever was adjudged due by “a competent court or tribunal”. The undertaking also provided that they would instruct solicitors at the request of the cargo interests to accept service “of in rem proceedings brought by you in a competent court and/or tribunal as mentioned above and file an acknowledgement of service thereof, albeit wholly without prejudice to the owner’s rights to contest jurisdiction and/or apply to stay such proceedings”.

The cargo interests later issued legal proceedings in rem against the carrying ship and eight sister ships. They then asked the club to appoint English solicitors to accept service of the claim form. The club refused. The cargo interests obtained an order against the club requiring them to make specific performance of their obligation. The club appealed to the Court of Appeal.

The club argued that they were only obliged to instruct solicitors to accept service of proceedings brought in a court where those proceedings could be commenced and pursued to a conclusion. The English courts failed on both counts. Proceedings could not be commenced in England because the carrying ship and sister ships had not come within the jurisdiction. Proceedings could not be pursued to a conclusion because of the jurisdiction clauses in the bills.

The case therefore turned on what was meant by “competent

court”. There were two possible interpretations of this phrase. The first was that the English Admiralty Court had jurisdiction to entertain in rem proceedings by virtue of sections 20 and 21 of the Supreme Court Act 1981. Section 20 defines the Admiralty jurisdiction of the High Court and provides, for example, that the court has jurisdiction to hear any claims arising out of an agreement relating to the carriage of goods in a ship or for the use or hire of a ship. Section 21 provides that an action in personam can be brought in all cases and an action in rem can be brought in certain specified cases.

The club argued for a different interpretation, which was that it was the obligation of the cargo interests to identify a jurisdiction in which proceedings could be commenced by arresting or at least serving process on a ship. Only the courts of that jurisdiction would be “competent”.

The Court of Appeal decided that the first interpretation was correct. It was influenced by the fact that many clubs are managed in London, that cargo insurers are also often in London, that cargo claims are often resolved in London by agreement between the parties (“being sensible commercial men”) and that the Admiralty Court is the “local” court. It noted that the letter of undertaking specifically referred to “solicitors”.

It also said that there were considerable practical difficulties about the approach argued for by the club – e.g. does the ship have to be within the jurisdiction of the “competent court” when the proceedings are issued, or when the club is asked to instruct solicitors, or at some other time, and does the ship have to be in a port where it is practicable to arrest it or is jurisdiction conferred on the court if the ship sails through the territorial waters of the relevant country on its way somewhere else?

The Court of Appeal therefore dismissed the appeal. However it should be noted that, although the cargo interests will now be in a position to found jurisdiction in England, it will still be open to the shipowners to apply to have the proceedings stayed because of the jurisdiction clauses in the bills of lading.

Mr Justice David Steel ruled that the parties who are entitled to limit their liability are the shipowners and other parties who might incur liabilities as a result of activities normally associated with ship owning.

#### ***The "CMA DJAKARTA"***

This case concerned the question of whether a charterer can limit his liability under the 1976 Limitation Convention for damage caused to a ship.

The shipowners time chartered their container ship to a shipping line to be traded as part of their liner service. During the currency of the charter party there was an explosion and fire on the ship which caused it to be abandoned. The owners claimed damages from the charterers and an indemnity in respect of claims by cargo interests on the grounds that the explosion and fire were caused by shipment of two containers of bleaching powder in breach of the terms of the charter concerning dangerous cargo. In the ensuing arbitration, the charterers sought to limit their liability under the 1976 Convention which included the word "charterer" in the definition of shipowner. The arbitrators ruled against them and they appealed to the High Court on a point of law.

Mr Justice David Steel ruled that the parties who are entitled to limit their liability are the shipowners and other parties who might incur liabilities as a result of activities normally associated with ship owning. For example, if cargo owners brought claims against a time charterer on the basis that he had contracted to carry their cargo, this would be a claim in the nature of a claim against a shipowner and the time charterer would be able to limit liability. A single limitation fund would then be set up in respect of all parties exposed to claims as shipowner, since all those parties would have a common interest in resolving such claims. Where the owner was himself claiming against the time charterer, there was no common interest between them. The owners' claim against the charterers for damage to the ship could not give rise to a claim by the charterers to limit their liability "in respect of damage to property in connection with the operation of the ship" because "property" and "ship" were separate – the property damaged could not be the ship whose operations caused the damage. The charterers were therefore not entitled to limit their liability.

#### ***The "RAFAELA S"***

This case deals with the legal effect of a "straight" bill of lading. A "straight" bill of lading is one which provides for the cargo to be delivered only to a named consignee. An "order" bill is a bill of lading under which the carrier agrees to deliver the goods at their destination to a named consignee or to his "order or assigns".

Goods were shipped from Durban to Felixstowe in England and from there to Boston in the USA. They were damaged during the voyage from Felixstowe to Boston. The central issue was whether the contract for the carriage of the goods from Felixstowe to Boston was governed by the (English) Carriage of Goods by Sea Act 1971. If it were not, it would instead be governed by the (US) Carriage of Goods by Sea Act 1936 which provided for much lower limits of liability.

The English Act applies the Hague-Visby Rules to contracts for the carriage of goods by sea where "the contract expressly or by implication provides for the issue of a bill of lading or any similar document of title". The carriers argued that a "straight" bill of lading was not negotiable or transferable and was therefore not a "bill of lading or any similar document of title" to which the English Act could apply. This view was accepted by Mr Justice Langley at first instance. However, the Court of Appeal disagreed with him. It held that, although a straight bill of lading is not negotiable, it is still a "document of title". The court relied in particular upon the fact that the bill of lading would have to be produced by the consignee in order to obtain delivery of the cargo, which was consistent with it being a document of title. In this particular case the bill of lading which was issued only covered the voyage from Durban to Felixstowe and no fresh bill of lading was issued covering the voyage from Felixstowe to Boston. However, the shipper was entitled to demand the delivery of a bill of lading covering the voyage from Felixstowe to Boston. The contract therefore fell within section 1(4) of the English Act and was subject to the Hague-Visby Rules.

### ***The “STARSIN”***

The House of Lords issued its decision in this important case on 13th March 2003. The long document deals with a number of issues, of which the principal ones were the identity of the carrier under the bills of lading and the effect of a Himalaya Clause.

*The “STARSIN”* carried a number of parcels of timber and plywood from ports in the Asia Pacific region to Western Europe. The cargo suffered damage during the voyage because of negligent stowage. The cargo receivers brought claims against the shipowners. The ship was on time charter to CPS which operated a liner service. The bills of lading were liner bills issued by CPS and signed by agents “as agent for CPS (the carrier).”

Clause 1 of the conditions on the back of the bills provided that the carrier was the party on whose behalf the bill had been signed. However clause 33 was an identity of carrier clause which provided that the contract evidenced by the bill was between the merchant and the owner of the vessel. Clause 35 was a demise clause which provided that, if the ship was not owned by or chartered by demise to the company which issued the bill, it took effect only as a contract with the owners or demise charterers.

There was therefore a conflict between the different provisions of the bills. The way in which they were signed clearly pointed to them being charterers’ bills. The wording of clauses 33 and 35 on the reverse suggested that they were owners’ bills.

At first instance the judge decided that they were charterers’ bills. The Court of Appeal by a two to one majority reversed this decision and decided that they were owners’ bills. This decision was widely criticised for being uncommercial. Anyone looking at the front of the bills would quickly conclude that they were signed on behalf of the charterers. It would then be necessary to go through all the clauses on the back and read as far as clause 33 before finding anything that contradicted this.

The five judges in the House of Lords unanimously overruled

this decision and found that the bills bound the charterers. This accords with commonsense and is also consistent with banking practice where banks will accept a document on the basis of the signature on the front and will not examine the detailed conditions on the reverse.

This led to the second issue. The cargo owners maintained that, if they were not able to sue the shipowners in contract, they could bring a claim against them in tort. The shipowners argued that, although they were not a party to the bills of lading, they were nevertheless protected by the Himalaya Clause. This stated that a servant or agent of the carrier, including any independent contractor, was under no circumstances to be under any liability to cargo interests. The shipowners argued that they were an independent contractor and were therefore entitled to the benefit of this provision.

The House of Lords accepted that the Himalaya Clause was in principle valid. However (with one judge dissenting) they further decided that the shipowners were taking on responsibility for carriage of the cargo and that accordingly their liabilities and immunities were the same as those of the carrier. The carrier under the bills of lading (i.e. the charterers) carried the goods under the Hague Rules and the exempting provisions in the bill of lading were invalid because they were repugnant to the Hague Rules. It was therefore still open to cargo interests to sue the shipowners.

The final twist was that in practice only one of the cargo claimants was able to maintain a claim in tort. This was because under English law a claim in tort for damage to goods can only be brought by someone who had legal or possessory title to the goods at the time when the damage occurred. The negligent acts of the shipowners took place whilst the cargo was being loaded on board the ship. Only one of the claimants could show that they already owned the cargo at that point. The remaining claimants only acquired ownership of their respective cargoes at a later date and their claims accordingly failed.

*Legal Update is supplied by CTC Legal*



The Customs Commissioner Robert C. Bonner stated that, "Our goal is to achieve a full compliance quickly and efficiently whilst still maintaining a high rate of trade compliance".

## Legal Update

### United States of America Security

#### Cargo Manifests

The United States of America Customs and Border Protection has begun the next stage in the enforcement of the 24-hour rule for advance cargo manifest declarations. The rule has been applied since February 2003 to identify potential threats before a ship leaves a foreign port. Customs have begun to issue 'Do Not Load' messages for containerised cargo with invalid or incomplete cargo descriptions following a period when those orders only applied to specific violations. In addition, financial penalties are being applied for late submissions.

The Customs Department has said that it has reviewed more than 2.5 million bills of lading in the period between February and April during which time about 250 containers were denied loading because of inadequate cargo descriptions. The Customs Commissioner Robert C. Bonner stated that, "Our goal is to achieve a full compliance quickly and efficiently whilst still maintaining a high rate of trade compliance".

#### Bio-Terrorism Act

In a separate measure, the Bio-Terrorism Act passed by the US Congress last year will put in place new legislation, as existing laws do not cover the food chain. The Act is designed to put in place a rapid and immediate response to any bio-terrorism threats against the United States. The new requirements will

make it mandatory for all global food exporters to the USA to be registered with the Food and Drug Administration before December 2003, when the Act will come into force. If the exporter is not registered, his containers will not be allowed into the USA.

The Food and Drug Administration will have a computer system that will allow for on-line registration of shipping information. Foreign companies requiring registration may designate a US agent to register on their behalf.

The requirement applies to all international food exporters and will apply to anything that covers any form of food or beverage. Under the Act a Notice of Importation must be submitted for all imported foods products, human or animal, including bonded stores, regardless of whether or not these are products are intended for consumption in the USA. They must also meet prior arrival notification requirements of not more than five days.

It is noted that bulk cargoes may be exempt providing an application for exemption has been approved.

Members trading to the USA are requested to ensure that manifests are filed in accordance with the regulations and, where foodstuffs are involved, that they are registered with the proper authorities.



## Tail Ends

### Shipping Company Identification Number

Recent discussions at the IMO have approved in principle the introduction of an identification number for shipowning and ship management companies in a boost for the campaign for greater transparency in the shipping industry. The new number will be similar to the existing number used for the identification of ships; it will be used world-wide and will be made mandatory through an amendment to the International Safety of Life At Sea Convention. The use of the identification number is expected to have both safety and security benefits.

Priority will be given to its inclusion of the new identification number in the International Safety Management Code certificates as well as the company's document of compliance and the safety management certificates issued for each ship operated by that company. Where several companies need to be identified with the same ship, then several numbers will be allocated.

The identification number would also be required to be included on ship security certificates and on the continuous synopsis records.

The company coding identification number is expected to be developed and managed at no cost to the industry in collaboration with Lloyd's Register.

### Search and Rescue

It is announced that the Indian coast guard has introduced a new search and rescue system for ships in the Bay of Bengal and Arabian Sea area from March 2003. The system will utilise Inmarsat 'C' technology and all ships in the area will be asked to report their position on a daily basis in order that the new system, named INDSAR, can build up a surface picture of the region. Should a ship get into distress, other vessels in the vicinity can be directed to the scene as quickly as possible.

The system funded by the Indian government is similar to both AUSREP and AMVER and is being provided at no cost to the ship owner.



Indonesia's waters remain the worst pirate infested area with 28 attacks reported, far ahead of the next largest Bangladesh, India and Nigeria each with 9 attacks reported in each area.

### Piracy at Record Level

Piracy on the high seas has hit a record level in the first three months of this year, says the International Maritime Bureau in a report issued by the piracy watch centre in Kuala Lumpur.

There have been 103 reported incidents from January to March this year, compared with 87 in the same period last year and it the first time in a decade that 100 piracy attacks were recorded in the first three months of any year.

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The IMB have also reported a breakthrough in that courts in India and China have sentenced two sets of Indonesian pirates to between 7 and 15 years in prison for their part in part in two separate attacks on ships in 1999. "The authorities are to be congratulated for having taken these difficult cases through to prosecution; it is the kind of response which will deter future pirates in the area" said the IMB director.

Maritime security and intelligence experts say that ships using the Malacca Straits are prime targets for both piracy and terrorist attacks due to their economic importance, high traffic volumes and the ships' limited manoeuvrability.

Members whose vessels trade to this area are asked to be guided accordingly.

### Watchkeeping Rules

The New Zealand Maritime Safety Authority (MSA) is set to introduce new rules governing the qualifications of watchkeepers aboard ships. Work on the new regulations is due to begin within the next few months. The decision has arisen out of a Transport Accident Investigation Commission, that has urged authorities to make a critical review of the need for watchkeepers to be appropriately qualified.

An MSA report into the fatal collision and sinking of a yacht by a 1500 tonne barge under tow, in which the yacht owner lost his life when the yacht hit the partially submerged towline between the tug and barge, has blamed poor watchkeeping skills as a major factor in the accident.

Members are asked to be aware of this situation.





## Bulletin Board

### P&I Executive Department

We are pleased to announce changes to the P&I Executive Department, which has resulted in two members of staff returning to the London office on completion of their overseas postings.

**Paul Engels** has returned to London as Deputy Chief Executive.

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**Jeremy Grose** returned to London on 1st May to take up the position of Operations Director of the P&I division.

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### Staff News

**Simon King** has joined Syndicate B/C as a Claims Executive

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