

UK P&I CLUB



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HELLAS HIGHLIGHTS

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UK P&I AND
UKDC ARE
MANAGED
BY **THOMAS
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HIGHLIGHTS

INTRODUCTION

This is my first issue of Highlights completed while in situ in the Thomas Miller (Hellas) office. You may remember in the April edition we alluded to a number of changes taking place in the Hellas office this summer. Rod Lingard has returned to the London office as joint Managing Director of Thomas Miller War Risks. Rod will have particular responsibilities for managing the Hellenic War Risk Association. I have taken up Rod's mantle and will oversee the Hellas office activities as Regional Director, whilst continuing as Club Manager for Thomas Miller Defence Club. As you are aware Tony Fielder will be returning to the London office to join Syndicate 1 as a Senior Claims Director. Eleni Nomikou however, will be joining us in October and Alec Kyrle Pope will be joining us in November as a Senior-Claims Executive.

The past five years have seen a growth in membership serviced by the office, and the changes taking place are part of our ongoing service commitment to ensure that we have the right people in the right places in order to serve the shipping community.

We welcome any feedback on Highlights and invite you to recommend any future topics that may be of interest. Contact details for the Hellas office can be found on the inside back page of this issue.

Daniel Evans

Regional Director
and Club Manager

Highlights is a periodical newsletter from the Thomas Miller Hellas Team.

It covers the latest news and events from the region as well as topical issues affecting our Members.

If you have any suggestions for future issues, please send your comments and ideas to Anna Lagos at anna.lagos@thomasmiller.com

OFFICE OPEN DAY

Thomas Miller (Hellas) Ltd. had its most successful Posidonia party yet. More than an estimated 700 P&I Defence, Hellenic War Risks, and ITIC Members, together with brokers, lawyers, surveyors and other shipping service providers attended the open office event on the afternoon of Thursday 5th June 2014 at the 5th floor, 93 Akti Miaouli.

The Thomas Miller reception traditionally comes towards the end of the exhibition week so gives those attending an opportunity to wind down whilst enjoying good food and company overlooking the Piraeus cruise terminal - unfortunately without any cruise ships docked this time.

The events during the early part of the week were plagued with cool temperatures and rain, which had deposited dust and sand blown over from North Africa. However on the 5th June the weather turned back in our favour to the usual seasonal clear sky with a temperature of around 30°C.

Our caterers once again did us proud with the now famous oriental style buffet which included sushi and duck spring rolls. On a hot day the Movenpick ice cream proved popular as ever.

The feedback from all those who attended was extremely positive and we hope you will join us again for 2016.





THE POSIDONIA CUP

On 30th May 2014 a team from the UK P&I and UK Defence Club competed in this year's Posidonia Cup race.

Faliron Bay was the venue for the race which took place in blustery conditions. Winds of beaufort force 6 gusted occasionally to 2, 7 and 8 which led to challenging yet enjoyable conditions.

Our yacht the BLUE SEAL a Bashford 41 had won the Sydney Hobart race back in the 1990's.

The team included: Rod Lingard, Haris Rocanas, Nick Milner, Mark Mathews and Alexandra Couvadelli from Thomas Miller (Hellas) Ltd.. Also, John Botonakis of Chartworld, Zefi Gritza of Elmira, Natalia Athanassiou of Empire, Stefanos Angelakos of Angelakos (Hellas) S.A. and Sozon Alifragis of ADK Maritime.

Unfortunately the team did not win. However, an enjoyable day was had by all.

A short video of the event, courtesy of Sozon Alifragis, can be found at: <http://youtu.be/12cG9JxxZQM>



ROWING COMPETITION - 27th May 2014

The Rumble in the Jungle – Muhammad Ali against George Foreman; Bjorn Borg's thrilling 5 set win over Jimmy Connors at Wimbledon in 1997; Liverpool's comeback against AC Milan in the European Cup Final and Greece's win at the 2004 European Championship. Now there is another to add to the list – Thomas Miller (Hellas) Ltd.'s win against the American Club at a charity rowing event off Mikrolimano on 27th May 2014.

After last year's dragon boat racing debacle, Thomas Miller were on form with three straight wins! The only glitch on the night was during the second heat when Thomas Miller attempted to drag the marker buoy with them. Fortunately the race was stopped and restarted without any encumbrance.

The event took place in front of the Istioploikos in Mikrolimano and was organised by Hill Dickinson as part of their '60 at 60 Project.' As their Senior Partner Dave Wearing is 60 this year, he has been challenged by the company to raise £60,000 at various charity events during the year. Funds raised at the event were in aid of two charities, the Greek branch of 'Médecins du Monde' (<http://mdmgreece.gr/>) and 'Ark of the World' (Kivotos tou Kosmou) (<http://kivotostoukosmou.org/>).

Our thanks must go to Hill Dickinson for organising the event, but also to the other teams that took part and to the local sea scouts who organised and assisted with the racing.

A new trophy cabinet to display the cup is under construction!







MARINE FAMILIARISATION COURSE

– EVDEMON AND PARTNERS

Marine Familiarisation Course

Participants from the UK, Russia, Turkey and Greece were given the opportunity to see, first hand, the practical work of surveyors. The hands-on course incorporated visits to the major local shipyard of Tuzla with the Evdemon surveyors, where various types of handysize vessels (chemical tankers, bulk carriers and LPG) were observed.

In the case studies our hosts advocated Tuzla's technical expertise in repairing machinery failure and hull damage.

The shipyard visits also demonstrated Tuzla's technical expertise, whilst the yards' marketing managers also emphasised the very competitive nature of their costs. Presentations were attended on some of the most difficult cases of ship repairs that our hosts had successfully accomplished.

The Evdemon and Partner's course addressed the role of the surveyor in ship repairs. The different repair methods and their application, depending on the shipyards were also demonstrated. Case studies of steel renewals affected with high quality prefabrication of in situ fitting and welding, as well as renewals of floors and internals by fitting plates (as delivered by suppliers) were also presented.

Certain key roles of surveyors were outlined. These included: 1) determining and mapping structural plans whilst keeping renewal boundaries in mind 2) monitoring repair progress and controlling changes to quantum as they develop 3) establishing exact quantum of steel renewed and 4) conducting owners through negotiations with the yard. The course made a very compelling case for repair and other work to be carried out in Tuzla with the assistance of Evdemon & Partners.

Salvage in Turkish Waters and the TOF

On the final day of the course, Dr. Ulgener, of the local law firm, Ulgener Legal Consultants Law Office, presented the subject of salvage in Turkish waters.

The current situation finds a monopoly of salvage in the area (the entrance to the Bosphorus from the Black Sea and all of Marmaras until exiting the Dardanelles in the Aegean Sea are all incorporated) this means it is controlled by a government owned company, the Coastal Safety Association. The Coastal Safety Association has a special contract for salvage operations referred to as the TOF – the Turkish Open Form.

Similar to the Lloyds' Open Form, the TOF is based on the "no cure no pay" and other internationally recognised



A big thank you goes out to Evdemon & Partners for inviting us on their Marine Familiarisation Course in Istanbul. The course incorporated an overview of a surveyors work in Tuzla, ship and shipyard facility visits and a legal update on ship salvage in the Bosphorus.

principles but is typically used in Turkey as a means for the Coastal Safety Association to bring the salvaged ship in for negotiation. This is often, among other reasons, because of a provision in the TOF which states that 12% of the salvage award will constitute the arbitrator's fee. Because of this provision, Owners will always try to settle amicably.

Groundings

Typically salvage arises in cases of a ship grounding or drifting due to engine problems. For the first 48 hours the Master can try to salvage the ship on his own. After the 48 hours has elapsed the TOF needs to be accepted and once the salvage is performed, 20% of the estimated salvaged value is requested as security (under threat of arrest).

In negotiating, it is vital to have your own representative help ascertain exactly what the salvaged value is (the ship, the cargo, the bunkers and the freight). Caution is required here.

Where there is a signed TOF, the final amount settled at, depending on the circumstances is frequently around 7% of the salvaged value.

Drifting

Unlike grounding situations, salvors in drifting scenarios do not have the same time to negotiate. Everything here is of a rapid pace and if a TOF is not signed, there is another route open for Owners to take.

If a TOF is not signed and a deal is not struck in the days following the salvage, the ship will be arrested. A bank guarantee for 20 % of the salvaged value will be required and the matter will be subject to Turkish common law. It may take three years and will cost in legal fees, but, ultimately, in the long run, it is very possible to reach a much more reasonable outcome (in the region of 2.5% of the salvaged value).

That there have already been favourable results reached in recent cases now gives Owners a powerful tool in which to negotiate with. The lawyers' connections to the parties involved are the final and important elements to consider. It is advisable to go local when fighting such cases, as the room for negotiation between parties can vary greatly.



STEEL CARGOES AND AVOIDING CLAIMS

Steel cargo is very susceptible to damage and its trade is often accompanied by receiver's claims against the ship. With steel cargo there is no exact and binding authority applicable across the board, on acceptable levels of damage. Industry tolerance levels and standards vary. Claims Executive Efcharis Rocanas clarifies the question "what is damaged steel"? And offers guidance in how to minimise the risks of claims arising as a consequence of transporting damaged steel.

Rust issues

The most common problem with steel cargoes is rust. The steel may have “streak” marks which indicate that water has run across the surface, “spots” localised slight penetrations of the mill scale, “stains”: a tan-coloured and fine dust-like coating, “scale”, a thick flaking rust, or might be “rusty”: a thick coating of brown scale, which when removed leaves the remaining surface uneven or “pitted”: penetrations of the surface with minor indentations which wire brushing cannot remove.

Pre-shipment Surveys and Clauses in Bills of Lading

One of the ship's first important shields against a claim is that the damage to the cargo is often caused before shipment.

Steel cargoes will invariably display some mechanical damage, such as edge denting due to handling and some surface rust, making it difficult, if not impossible, to reject all cargo which presents defects. The Club will appoint a qualified surveyor to inspect the cargo and provide an expert report on the state of the steel products before shipment. This will often include details on the extent of rust and photographs. Mate's receipts and subsequently bills of lading must be claused with the surveyors' remarks on the cargo's condition.

It is usually the case that shippers can not accept a claused bill of lading, because this would breach the terms of the letter of credit provided by the banks to finance the purchase of the steel. In these circumstances, the shippers may demand that the bills of lading be marked clean and they may offer that the Owner accept an LOI to issue clean bills. As Members will be aware, marking a bill of lading clean when, in fact, it is not may prejudice

club cover as the bill will not contain a true and accurate reflection of the cargo. In addition, an LOI may not be legally enforceable and is also only as good as the provider supplying it. Extreme caution must be exercised when contemplating whether to accept such a request.

RETLA clause

Members may also be requested to include a RETLA clause in bills of lading. This clause first appeared in a 1970 US 9th Circuit case, **Tokio Marine and Fire Insurance Co. Ltd. v Retla Steamship Co. It** was developed as a convenient way of issuing clean bills satisfying the interest of shippers and trying to protect the carrier from cargo claims.

A typical RETLA clause reads as follows:

The term “apparent good order and condition” when used in this bill of lading with reference to iron, steel or metal products does not mean that the goods, when received, were free of visible rust or moisture. If the shipper so requests a substitute bill of lading will be issued omitting the above definition and setting forth any notations as to rust or moisture which may appear on the mate's or tally clerk's receipts.

Such clauses have been upheld in the U.S. on the basis that the RETLA clause was printed on the face of the bill of lading and was not confined to the fine print on the back and on the basis that the clause contained a provision that the shipper could request a substitute bill of lading which was claused to reflect the condition of the cargo noted in the Mate's receipts.

The position in the US is not the same under English law. In the case of **THE SAGA EXPLORER** [2012] (EWHC 3124), the English

High Court refused to follow the US position and found the RETLA clause breached article III rule 8 of the Hague Visby Rules. The Court found that a carrier could not introduce clauses into bills of lading which would limit its liability for losses or damage to the cargo whilst in his care. This was rejected on the basis that: such a construction would rob the representation as to “good order and condition” of all effect.

The only safe means of avoiding claims arising from pre-shipment damage is therefore to ensure that the bill of lading is claused to reflect the apparent order and condition of the goods at the time of loading. Failure to properly describe the condition of the cargo leaves the carrier open to allegations of being a party to misrepresentation, particularly from third party purchasers of the cargo who have only contracted based on the bill of lading, and who have not been shown any pre-shipment survey by the sellers.

Loading / Lashing / Stowing / Securing

Storing steel outdoors and loading during rain

Storing steel products in the open, both before shipment and after discharge can be risky. Some types of steel cargo, such as construction steel, are stored in steel producers' premises for some time before being delivered to the load port. The steel is usually transported from the factory to the port by rail, either in open or covered wagons or lighters which are covered but not necessarily water-tight or on flatbed trucks. There is a risk of free water collecting at the bottom. Furthermore, cargoes are frequently assembled some time before the ship arrives at the loading berth and the cargo of steel is usually stored, unprotected, in the open. It will be



STEEL CARGOES AND AVOIDING CLAIMS (continued)

exposed not only to the risks of rain, but also to the atmosphere, which contains salts and is usually polluted. The amount of rust can increase drastically in these conditions.

Extra caution is advised when it starts to rain during loading operations. Although short periods of rain are not necessarily a reason to refuse to load, steps must be taken to ensure that the cargo is kept dry. If the cargo gets wet, free moisture may collect on the tank top and build up in the compartment, resulting in some of the cargo being submerged in rain water. Atmospheric rusting will also be exacerbated.

A surveyor should be appointed to ensure that all reasonable steps are taken not to increase the risk of damage to the cargo. When deciding whether and how to load cargo during rain, special consideration must be afforded to changes in temperature, which are anticipated during the course of the voyage and to the effect that rainwater may have on the other cargo, already loaded in the compartments.

In the above circumstances, bills of lading should always be marked

“wet before shipment” and advice should be sought from the Club’s local correspondent on further steps to take.

Strapping bands on coils

Special care must be taken to ensure that coils at the time of shipment are tightly wound with strapping bands. Coils which have slackened off due to broken or slipped security bands can cause instability of the stow and handling problems. Claims may also arise from the mills which uncoil the cargo as they may need to slow down, potentially causing disruptions/losses in their production programme.

Furthermore, when tightening coils which have slacked off, special care must be taken to ensure that stones, or other objects, have not penetrated between the turns of plating. These objects must be removed so as to avoid serious marks to the surface of the steel which would result if the coils were tightened, while there are still objects between its turns.

Securing shipments of steel

There are various methods of securing shipments of steel, such as using flexible flat metal banding

secured by clips or steel wire for coils and wooden dunnage or timber framing for plates or slabs. The use of a specific method may be stipulated in charterparties. Owners should be aware of the potential implications if they sign charterparties containing clauses mentioning methods of stowage not suitable for their ships.

Properly securing the cargo onboard is very important. It is therefore advisable to appoint a surveyor to attend at load-port in order to ensure that the securing system has been properly applied and that the manufacturers’ instructions are followed.

Expensive claims can arise following shifting of heavy plates or steel slab cargoes, ranging from mechanical damage to the cargo, injuries, damage to the hull, even to total loss. Shifting of these cargoes has been reported to have occurred even in moderate weather conditions, giving rise to claims based on criticisms of the methods of stowage.

Some stowage methods have been devised in order to speed up the turnaround of ships and to reduce expenses. One such system

involves a series of heavy lifts into the ship. Each lift comprises a block of slabs or plates (which can weigh as much as thirty-six tonnes or more) each lift is landed in a convenient position and succeeding lifts are landed adjacent to each other, in the square of the hatch, where all the cargo is stowed. Dunnage is not used between the individual stacks resulting in wide gaps between the cargo and the ship's port and starboard side. Flimsy timber framings are sometimes used to fill these gaps and metal strapping bands are sometimes used to secure each stack. Whatever wooden dunnage may be placed between slabs is often slack before the ship sails.

The main criticism, in terms of safety however, concerns block stowage of bundles of steel slabs loaded directly into the hatch squares of bulk carriers, leaving the space above the sloping lower wing tanks free of cargo. In these circumstances, no matter what lashing or securing is used, there is still the potential for a shift of cargo. The advice is that stowage must extend out to the ship's sides and the top of the stowage must be level. The only alternative would be to construct, and weld in position, substantial steel framing between the ship's side and the cargo above the sloping lower wing tanks. There is no objection to using block stowage methods in ships with box-shaped holds, as long as the stowage extends to the full width of the ship and, again, the top of the stowage is level.

One of the most common forms of block stow is the 'California block stow' a method devised by California Steel industries. This consists of slabs placed squarely on top of each other. Timber dunnage is placed on the tank-top, between each tier and

between the stacks as chocking and steel bands are used to secure the slabs together. This is a method of stowage for ships with box-shaped holds. The stowage must extend to both port and starboard sides and must be sufficiently chocked against the hold side plating and throughout the full breadth and length of the stowage. The California block stow cannot be used in the holds of other ships, because the cargo would not be adequately secured.

Masters should be on guard against situations where steel plates may be presented for shipment which are too large to fit the hatch opening dimensions. Attempts may be made to persuade the master to carry such plates on hatch covers or weather-decks. If steel plates are loaded on deck, care should be taken to ensure that the plates are individually stowed, dunnaged, chocked and lashed. There should be no plate-on-plate interfaces. It is also important, in such circumstances, to clause mate's receipts appropriately in order to reflect stowage on deck.

The correct and safest method of carrying steel slabs and heavy steel plates is to stow across the ship from side to side. This entails winging the stow out to the ship's sides and results in overlapping of horizontal layer ends. In the case of slabs, this method of stowage entails handling each slab individually in the hatch, using a forklift truck. Similarly, steel plates, depending on their weight per unit, can only be handled a few at a time. Wooden dunnage should be placed between

plates or slabs, in order to prevent any tendency to shift. In some cases, consideration may be given to the lashing of such stows with steel wires, preferably attached to steel eye pads. This applies particularly in the upper decks of tween deck vessels.

Discharge

The receivers may wish to instruct surveyors to attend on-board at the discharge port in order to ascertain the quality of the cargo. Claims for steel damage caused by salt water are quite common at discharge, which is why it is important for the surveyors undertaking the preloading survey to check for salt contamination before loading, to ensure that hatch covers are watertight at the start of the voyage and to certify that the bilge system is tight and that the holds are free from salt.

Conclusion

Given the value of steel cargoes it is imperative that care is taken in monitoring and recording any issues during loading. It is important that bills of lading record the condition of the cargo and although pressure to issue clean bills may occur this should be resisted on the basis that the receiver is the party that will be the aggrieved party if the cargo is found to be damaged on discharge. In these circumstances what occurred at the load port will be irrelevant in the eyes of the receiver who will want to secure compensation for any damage that may have occurred.

The all encompassing advice for steel is: ascertain the exact quality of the cargo before loading and clause the bills accordingly, stow and secure in accordance with the type of ship and cargo and beware of LOIs and RETLA causes.



ENFORCEMENT OF GUARANTEES IN CHINA

Marc Jackson reviews the problematic issues of enforcing guarantees provided by Chinese guarantors in China.

Pursuant to Chinese law, it is illegal for a Chinese legal entity to provide a guarantee to a foreign legal entity unless permission has been obtained from the State Administration for Foreign Exchange (SAFE). Accordingly, unless such a guarantee is SAFE registered, it cannot be enforced in China.

Whilst refund guarantees relating to shipbuilding contract avoid the need to obtain SAFE approval (on the basis that the issuing bank simply needs to report such guarantees to SAFE for risk management reasons), the same is not true of charter party guarantees which for all practical purposes have fallen outside the scope of SAFE approval.

There have been numerous instances, particularly following the financial crash of 2008, in which Owners have been unable to enforce arbitration awards against Chinese entities on the basis that the guarantees they provided were not SAFE approved, and thus illegal under Chinese law.

Relaxation of Position

However, new regulations pertaining to the provision of cross-border security came into force on the 1st June 2014 which significantly relaxed the position. These new regulations are wide ranging, and comprehensively cover a myriad of security situations.

From the shipping perspective, the most relevant situations arise when:

- a) the guarantor is Chinese and the other parties to the contract are based offshore (Nei Bao Wai Dai or “Outbound security”);
- b) the guarantor is based offshore, but the other parties are based in China (Wei Bao Nei Dai or “offshore security”) and;
- c) Any other type of security in which one or other principal party is based in China and the other offshore. It does not matter whether the guarantor is based in China or elsewhere in this situation.





What does this mean in practical terms?

- Security arrangements, such as a guarantee or standby letter of credit, are no longer subject to SAFE approval or administrative requirements.
- For “Outbound” or “offshore” security, the previous system of quota management and pre-approval has been replaced. Prior approval is no longer required and registration takes place following execution.
- In terms of other cross border security (i.e. (c) above) no registration is required.
- SAFE approval on enforcement of guarantees has been abolished.
- For charterparty guarantees, the new regulations should have a beneficial impact in that if a Chinese guarantor provides a performance guarantee and the charterer is a domestic Chinese company, then the guarantee does not require SAFE registration or approval at all.
- The new regulations should be beneficial for charterparty guarantees; if the charterer is a domestic Chinese company and the guarantor provides a performance guarantee, then SAFE registration or approval is not required for the guarantee. However, if the charterer is a foreign company, the Chinese guarantor is obliged to register the guarantee with SAFE within 15 days.
- It is understood that the position in relation to refund guarantees will remain unchanged, with SAFE approval not being necessary, although the banks do report to SAFE on a regular basis.

The relaxation of the SAFE procedures should bring greater certainty in terms of the enforcement of performance guarantees provided by Chinese companies. However, it is unclear what sanctions a guarantor would face if it failed to register the guarantee, and so an element of counterparty risk therefore remains.



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Lloyd's
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AEGEAN

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