UK P&I CLUB

UK DEFENCE CLUB

HELLAS HILIGHTS

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

In this issue

Contributors

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Editor

David Nichol
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Article: Navigational Safety

Marc Jackson
H1 Deputy Syndicate Manager
Article: OW Bunkers - Ways to avoid double payment

Jeff Lock
Senior Claims Director
Article: What's next for the Ballast Water Management Convention?

Lyall Hickson
Senior Claims Executive
Article: Removing Sanctions on Iran... Are we there yet?

Daniel Evans
Regional Director and Club Manager
Article: Welcome

HILIGHTS

WELCOME

Καλωσόρισμα

It is shaping up to be a busy year for the Clubs. As you will be aware, the UK Club is in discussions with the Britannia P&I Club about a potential merger. Discussions are on-going between the two Boards. The timetable for a recommendation by both Boards and a final decision by Members is still being finalised.

In terms of the office here, I am pleased to announce that Evangelia Ioannidou has joined our team. Eva has worked previously for a number of Greek based owners and brings with her a wealth of experience. Eva will be concentrating primarily on personal injury cases, working alongside Van and Eleni. I will introduce Eva to you as this year progresses.

On the not too distant horizon, we have our karting evening which is in the process of being planned along with Posidonia – invitations will be sent out shortly.

If you should have any questions regarding any of the articles contained within HiLights please do not hesitate to contact me or any Member of the team.

Finally, I would like to take this opportunity to wish all our Members **καλό Πάσχα**.

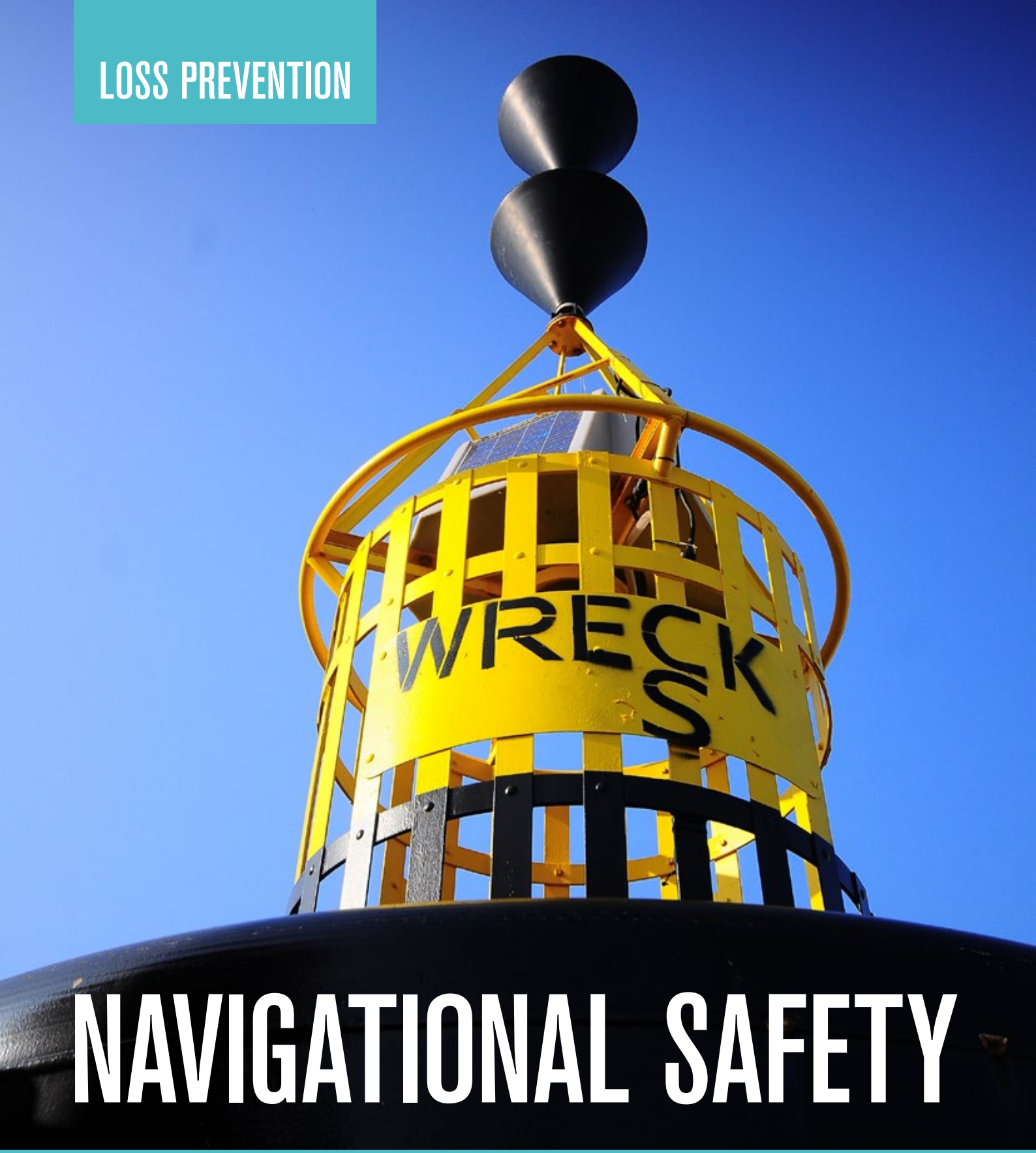
Daniel Evans
Regional Director
and Club Manager

Hilights 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 Efcharis Rocanas at **efcharis.rocanas@thomasmiller.com**

LOSS PREVENTION



NAVIGATIONAL SAFETY

Reports of ship groundings and collisions continue to be received with depressing regularity. Casualty investigations will often attribute the cause to some quite fundamental errors in the navigation of the ships involved. UK Club risk assessor, David Nichol, highlights some of the common contributory factors identified in casualty reports.

A modern ship's navigational bridge, with its integrated consoles, displays, state of the art technology and comfortable armchairs is a far cry from the equipment available to the navigator when David Nichol embarked on his seagoing career in the 1970's. Yet accidents continue to occur despite the subsequent advances in navigational equipment design and technology as well as the statutory introduction of uniform minimum standards of ship management, and seafarer training and education.

It is notable that these accidents involve ships operated by long established quality shipping companies. Apart from the disastrous effects of any loss of life and pollution, these casualties can prove to be deeply financially burdensome, both to the ship owners directly concerned and the wider shipping community by way of increased insurance premiums. High profile casualties also have a damaging effect upon the public perception of a marine industry which has over the years made real progress in improving the safety of marine transport and reducing its impact upon the marine environment.

Keeping a good lookout

The failure to keep a proper lookout is often cited in marine casualty reports. The basic principles of keeping a safe navigational watch, as enshrined in SOLAS and STCW regulations have not changed following the now universal carriage of GPS and the well advanced mandatory introduction of ECDIS on sea going ships. The COLREGS have remained practically unchanged for decades. Fundamentally, a proper lookout must still be kept by sight and hearing as well as by all available means appropriate to the prevailing circumstances and conditions. Similarly, the essential role of radar as an individual aid to navigation and collision avoidance tool remains as important as ever.

Situational awareness

Keeping a proper lookout and using all available aids to navigation will assist the Officer of the Watch (OOW) in acquiring an appreciation of the current and expected navigational situation, the proximity of navigational hazards and risk of collision, often referred to as situational awareness. Although there are numerous available definitions, situational awareness basically means knowing what is going on around the ship, enhancing the ability of the OOW to quickly recognise any ambiguities that develop in the navigational situation and to take necessary corrective action before a hazardous situation develops.

Over reliance on GPS

GPS is an invaluable aid to navigation which has taken a lot of the guess work out of establishing a ship's position on deep sea ocean passages and offshore areas.

> ...the exclusive use of GPS in coastal or confined waters may not be appropriate and is often a contributory factor in ship groundings.

However, the exclusive use of GPS in coastal or confined waters may not be appropriate and is often a contributory factor in ship groundings. In these circumstances, full use of radar ranges and bearings, visual bearings and transits should also be used as a primary means of fixing the ship's position. The advantage of cross checking the position using these alternative methods is that it will give the OOW a better situational awareness and sense of orientation of where the ship is located relative to the topography of the coastline and the proximity of hazards. GPS is not infallible. The OOW should be aware of the equipment's limitations and potential for signal degradation, interference from external sources, as well as the possibility of differences existing between the GPS datum and the datum of the chart in use, causing plotted positions to be discrepant. GPS is an aid to navigation, not a single means of navigation. Furthermore, the value of the "Mark 1 eyeball" should never be underestimated!

ECDIS

ECDIS has now largely superseded traditional paper navigational charts which have served navigators for centuries. Essentially it is able to display on a monitor selected electronic navigational charts, having similar visual characteristics to a paper chart but with additional functions, including the ability to automatically display the ship's GPS derived position and to overlay or superimpose information from other inputs such as radar and AIS. In properly trained hands, ECDIS should make a valuable contribution to safer navigation and assist in reducing the workload as compared to use of a paper chart. Unfortunately, inadequate training, a rushed transition period over to the new system and variations in the quality of some of the equipment on the market mean that ECDIS is not always being used properly or to its full potential. An inability to properly configure the ECDIS or any lack of confidence the OOW has in the equipment is potentially dangerous. In particular, continuously overlaying the display with radar imagery, AIS and other navigational input may clutter the display and cause the OOW difficulty in processing or assimilating information. As too much information is as dangerous as too little, it is important for the operator to maintain the distinct functions of the chart, radar and other aids to navigation.

Alternatively, the apparent technological competence of ECDIS can lull the unwary navigator into a false sense of security and engender over confidence in its abilities. For example, it is not unusual to find that navigating officers have neglected to plot the ship's position on the ECDIS using alternative GPS independent methods. Such uncritical acceptance of the displayed ECDIS own ship's position is not only dangerous but constitutes a potential breach of SOLAS and STCW requirements.

Complacency

A particular problem where ships are engaged on regular liner services, familiarity and low levels of stimulation may induce boredom and foster a lack of attention to detail in performing required navigational duties which in other circumstances would not be neglected. This will erode the ability of OOW to recognise or react to a changing situation. Complacency can also affect the Master, who may fail to appreciate the need to adapt standing orders to suit the prevailing conditions or whose own judgement may be impaired by repetitive performance of tasks. Accidents have occurred in circumstances where the presence of the Master on the bridge has resulted in confusion as to who has assumed responsibility for the navigation of the ship. The guiding principal is that the OOW must continue to execute his duties normally until such time as the Master positively declares that he has the conn (i.e., control of the engines and rudder). It is only at that time that the OOW moves into a supportive role.

Where there is an effective system of bridge resource management in place, junior officers should have the confidence to express any doubts as to the decision making or actions of more senior ranks without the fear of being reprimanded. However, with multinational crews on board ships being the norm, cultural as well as linguistic barriers to questioning authority may require to be overcome.

Distractions

Mobile phones have had a mostly beneficial influence on the ability of seafarers to keep in closer contact with their families, not to mention the operational advantage of managers, ship agents etc being able to communicate directly with the Master. However, the inappropriate use of mobile phones could distract the attention of the Master, pilot and watch keepers at critical moments and may also have an adverse effect upon sensitive navigational equipment. The use of mobile phones by persons on

duty should therefore be prohibited or carefully controlled. Playing music on the bridge or the use of iPods or similar personal devices has been known to distract the attention of watch keepers and inhibit their ability to keep a fully effective lookout.

The performance of any other duties not essential to keeping a safe navigational watch should be kept to a minimum. Other tasks should not compromise the core duties of the OOW.

Fatigue

A fatigued or overworked watch keeper will eventually make mistakes or fall asleep on duty with potentially serious consequences. The Bridge Navigational Watch Alarm System (BNWAS) is not there for continuously prodding an insufficiently rested watch keeper awake. Whilst the inherently unpredictable nature of ship and port operations can disrupt planned periods of duty, commercial considerations cannot be used as an excuse for breaches of STCW requirements governing periods of work and rest. Where practical compliance with STCW is not possible due to the demands of the trading pattern of the ship, appropriate additional crew should be engaged.

Commercial Pressure

There have been instances where Masters, under real or perceived pressure to arrive at a port in time to make a tide or preserve the ship's itinerary, have taken unacceptable risks by cutting corners or not proceeding at a safe speed in areas of high traffic density or restricted visibility. It is therefore imperative that it is made clear to ship's Masters that the over-riding priority is the safe navigation of the ship, not commercial expediency.

Technological progress has produced numerous benefits to seamen and should be embraced. However, there are many aspects of navigating the seas and oceans that remain constant. The sea is just as hostile an environment as it ever was and the challenge of safely navigating a ship to its destination cannot yet be overcome by the application of technology alone. That still requires the presence of intelligent, well educated, motivated and properly trained people with a solid grounding in the principles of good seamanship and traditional seafaring skills.

OW BUNKERS – WAYS TO AVOID DOUBLE PAYMENT

H1 Deputy Syndicate Manager, Marc Jackson looks at OW Bunkers and the English Court of Appeal decision in The "Res Cogitans" [2015] EWCA Civ 1058.

In the recent decision the Court of Appeal ruled that:

- The standard bunker supply contract was not a sale of goods contract subject to the Sale of Goods Act 1979. This was because of the combination of: (i) the retention of title clause, (ii) the credit period for payment, (iii) permission to consume the bunkers during that credit period, and (iv) the fact that title in the bunkers would be extinguished upon their consumption.

- The fact that OW had not paid their own supplier who had retained title under their own terms therefore did not give the owners a defence to OW's claim for the price.

Due to the ruling, Members may be exposed to having to pay OW, and then facing a claim by a physical supplier, so having to pay twice. Members are particularly exposed where the physical supplier may have a maritime lien over Members' vessel (for example, a US law maritime lien for necessaries).

The case was appealed to the UK Supreme Court and a hearing took place on 22nd and 23rd March, 2016. The Supreme Court's judgement is awaited. However, unless the Supreme Court overturns the Court of Appeal decision, standard bunker supply contracts governed by English law are, unfortunately, likely to be construed in the same way as that in The "Res Cogitans" and may be followed in other common law jurisdictions which regularly apply English judgments, such as Singapore and Hong Kong. Members are advised if possible to amend the standard terms in those bunker supply contracts moving forward. The following proposed amendments may be of assistance in avoiding the problem of double payment, although unless and until such clauses are tested in court it is difficult to give any definitive assurances:

- Deletion of any retention of title clause
  This should make the bunker supply contract an ordinary sale of goods contract subject to the terms in the Sale of Goods Act 1979, which would mean that the bunker supplier could not claim the price if title was not passed.

- Express term as to right to pass title
  This clause is intended to ensure that the supplier has to have the right to transfer title before claiming payment, or if not to allow Members to pay any physical supplier direct and in those circumstances not have to pay the contractual supplier.

  "Notwithstanding anything else in this contract (and in respect of which and in case of any inconsistency this clause shall be regarded as paramount) the seller agrees that it is an essential term of this contract that the seller has the right to transfer title to the bunkers at the point of their delivery and/or consumption. In the event that the seller has no such right, the buyer may if so advised make payment to any third party (such as a physical supplier) in whom title was vested at that point, and in such event any liability the buyer may otherwise be under to the seller shall be discharged in full and the seller shall have no claim against the buyer in respect of the bunkers whatsoever and howsoever arising".

Due to the ruling, Members may be exposed to having to pay OW, and then facing a claim by a physical supplier, so having to pay twice.

- "No Objection Certificate" clause
  This clause would require the contractual supplier to obtain a certificate from the physical supplier confirming that it had no claim over the bunkers or vessel.

  "In the event the Bunkers purchased by us as buyers from you as sellers are not physically supplied by you but by a third party or third parties, whether or not appointed or contracted by you (hereinafter referred to as "the Physical Supplier"), we require you, as a condition precedent to any obligation or liability on our part to pay you for the Bunkers supplied, to provide us with written confirmation (in English) (hereinafter referred to as "the No Objection Certificate") from the Physical Supplier(s) to us confirming:-

  (i) that the Physical Supplier has received payment in full for the Bunkers supplied by them,

  (ii) that the Physical Supplier has no objections to us making payment to you for the Bunkers supplied by the Physical Supplier, and

  (iii) that the Physical Supplier has no claim whatsoever against us or the Vessel in relation to payment for the Bunkers supplied.

  (iv) that the certificate issued by the Physical Supplier will be subject to English law and London arbitration.

OW BUNKERS – WAYS TO AVOID DOUBLE PAYMENT (continued)

For the avoidance of any doubt, it is agreed that unless and until we as buyers receive the No Objection Certificate(s), we are under no obligation to pay you any sum for the Bunkers sold and/or supplied to us and/or in any way liable to pay you for the Bunkers supplied by the Physical Supplier.

It is further agreed that this clause supersedes and/or overrides and/or prevails over any other clause, term or condition in this agreement between us and you, including any of your standard terms and conditions that are inconsistent with this clause, which clause is agreed by us and you to be a specifically negotiated clause in this agreement."

- Warranty that no claim by physical supplier
  This clause is intended to address the risk of "double payment" by the contractual supplier warranting that it has paid the physical supplier. Members would also have to ensure that any standard "no set off" clause was deleted or amended to allow a withholding from the contract price in the event of breach of this warranty.

  "The seller hereby warrants and represents, and continues to warrant and represent for at all times in perpetuity, that no third party (whether any physical supplier of the bunkers or otherwise) has any right to claim against the buyer (whatsoever and howsoever such a claim may arise and whether in tort or delict, bailment, contract, restitution or unjust enrichment, or any other juridical basis under any system of law whatsoever) or exercise any right of lien, charge, encumbrance or arrest over the vessel or any other vessels (whatsoever and howsoever arising) in respect of the supply of these bunkers".

It is recommended that the "No Objection Certificate" clause and warranty are used together but either would protect Members more than the bunker supplier's standard terms.

- Withholding in the event of claim by the physical supplier.
  This clause is intended to entitle Members to withhold payment in the event of a claim by the physical supplier and could be combined with the clause above. It would not however protect Members in the event that a physical supplier made a claim after payment to the contractual supplier.

  "Should any third party (whether any physical supplier of the bunkers or otherwise) make or intimate any claim against the buyer (whatsoever and howsoever such a claim may arise and whether in tort or delict, bailment, contract, restitution or unjust enrichment, or any other juridical basis under any system of law whatsoever) or exercise any right of lien, charge, encumbrance or arrest over the vessel or any other vessels (whatsoever and howsoever arising) in respect of these bunkers or their supply, then:

  a) The buyer shall be entitled to withhold payment to the seller until the said claim is finally resolved by final and unappealable judgment of a competent court, final and unappealable arbitral award, or amicable settlement;

  b) Upon the resolution of that claim by final and unappealable judgment of a competent court, final and unappealable arbitral award or amicable settlement, the buyer shall be entitled to deduct from the sums otherwise due to the seller such sums as it has been ordered or reasonably agreed to pay to the said third party".

Members are also reminded of the risk of having to pay out twice in the event that charterers are paid for bunkers on redelivery where charterers have not paid their own supplier. In those circumstances, it is likely that Members would have a claim against charterers but it is likely that Members would be exposed in the event of charterer insolvency. It may therefore be appropriate to add the following proviso to standard bunkers on redelivery clauses:

"Owners' liability to pay Charterers for bunkers remaining on board on redelivery [and Charterers' entitlement to deduct the estimated value of bunkers on redelivery from final hire(s)] shall under no circumstances exceed those sum(s) which Charterers have paid to the suppliers of those bunkers."

Members may also consider combining this clause with a suitably amended version of the clauses under the sub-headings ""No Objection Certificate" clause" "Warranty that no claim by physical supplier" and/or "Withholding in the event of claim by the physical supplier" set out above.

Members with any questions on OW Bunkers, should contact their usual Club contact.


NO SMOKING
SAFETY FIRST

FEATURE

WHAT'S NEXT FOR THE BALLAST WATER MANAGEMENT CONVENTION?

Senior Claims Director, Jeff Lock gives an overview of the Ballast Water Management Convention 2004.

The world's merchant fleet has been transporting water ballast around for more than a century. Today, it is estimated that merchant ships transfer between 3 and 5 billion tonnes of ballast internationally every year.

What is the problem?

The problem is that this enormous quantity of water ballast contains invasive aquatic species that pose a serious environmental, economic and health threat when transferred to a new environment. The majority of those species will not survive the voyage or the new environment to which they are transferred via ship's ballast tank, but those that do survive may pose a serious threat. The world's merchant fleet breaks the planet's natural barriers for species dispersal. The problem has escalated in recent decades due to increased trade and larger ships, and is now recognised as one of the major threats to the world's oceans.

There is an ecological impact as the displaced species may compete with native species and upset the natural balance resulting in lower biodiversity and an unhealthy ecosystem. There is also a potential social and economic impact affecting public health and jobs.

How is the problem being addressed?

It was in 1992 that the first formal international steps to address the problem were taken, when the United Nations Conference on Environment and Development (UNCED) called on the IMO and other international bodies to take action. In fact, the IMO had already been reviewing the problem and had published their own Guidelines in 1991 to restrict the transfer of invasive aquatic species. Those Guidelines were updated in 1993 and 1997 but it was not until 2004 that the IMO adopted the International Convention for the Control and Management of Ship's Ballast Water and Sediments (the Ballast Water Convention or BWM Convention).

The BWM Convention (BWMC) 2004 regulates discharges of ship's ballast water to reduce the risk of invasive aquatic species. The BWMC sets out strict ballast water discharge standards and a number of technologies have been introduced to achieve those standards.

When will it come into force?

This has been the big question for a number of years now, since the Convention was adopted in February 2004. It will come into force 1 year after ratification by at least 30 states comprising 35% of the world's total gross tonnage. In November 2015 when Ghana,

There is an ecological impact as the displaced species may compete with native species and upset the natural balance resulting in lower biodiversity and an unhealthy ecosystem.

Morocco and Indonesia had all ratified the Convention it was expected that they had tipped the balance. This resulted in a hasty recount of Flag tonnage. As of February 2016, following the recount 47 states representing 34.56% of the total gross tonnage had ratified the Convention. Ratification is very close and we may expect the threshold to be passed later this year with entry into force during 2017.

Which ships will it apply to?

The BWMC will apply to all ships of 400 gross tonnes and above from Flag States that have ratified, and to ships of 400 gross tonnes and above entering the jurisdictions of those Flag States.

What is the compliance schedule?

The Convention was drafted with a compliance schedule that anticipated the ratification threshold being reached by 2014. Due to the delay, the compliance schedule could not be enforced. The revised schedule is now straightforward and the date for an existing ship to comply with the ballast water discharge standard (D-2) is at her first IOPP renewal survey after Entry into Force. Ships with keel laying dates after Entry into Force will have to comply on delivery.

All ships over 400 GT	
With keel laying dates before Entry into Force.	To comply with the D-2 standard at her first IOPP renewal survey after Entry into Force.
With keel laying dates after Entry into Force.	To comply on delivery.

Are there any exemptions?

There are a few exemptions and exceptions.

Reg. A-3 Exceptions:

- Ships that discharge at the same location where the ballast water and sediments originated.

Reg. A-4 Exemptions:

- Ships operating in specific trades / voyages.
- Ships where there is no mixing of ballast other than specified ports and voyages.
- States will grant A4 Exemptions that will be valid for no longer than 5 years and can be withdrawn at any time.

Reg. B-4 Alternative Methods of Compliance:

- Ships that discharge ballast water to a reception facility or reception barges.
- Ships that use municipal water as ballast.
- Ships with sealed ballast water systems.

What is the ballast water treatment standard (Reg. D-2)?

Prior to discharge the ballast water must be treated to reach the "D-2 standard" as set by Regulation D2 of the Convention. This Regulation specifies levels of viable organisms left in the ballast water after treatment. Clearly, this requires ships to install a ballast water treatment system to treat the ballast water on board. The form of treatment may be:

- Mechanical – by filtration or separation.
- Physical – using sterilisation by ozone, ultra violet light, ultrasonic, oxygen removal, electric current or heat.
- Chemical – "active substance systems" using chemicals or biocides, organisms or biological mechanisms that must be pre approved by IMO.

What must a ship do between Entry into Force and her implementation date? (Reg. D-1 Standard)

Regulation D-1 of the Convention sets out the ballast water exchange standard (D-1 Standard). On Entry into Force, a ship will have to comply with D-1. It is by the implementation date (first IOPP renewal survey for existing ships) that a ship will need to comply with the D-2 Standard. Under D-1, at least 95% of the ballast water on board must be exchanged.

There are two main methods for D-1 compliance: Sequential or Flow Through. By the sequential method, fully segregated ballast tanks are completely emptied (individually or in sequence) and refilled with open ocean water. By the flow through method, open ocean water is pumped into already full ballast tanks. The water is then allowed to flow through and overflow from the ballast tanks. Pumping through 3 times the volume of each ballast tank is considered to comply with the 95% exchange standard.

It should be noted that a number of countries already require ballast water exchange. For example, USA, Canada and Brazil where ships have to perform ballast water exchange and report to national agencies prior to entering their territorial waters.

What are Owner's other obligations under the Convention?

By reference to the specific Regulations of the Convention, there are various other obligations:

Reg. B1 – Ballast Water Management Plan

Each ship must have on board and implement a ballast water management plan which has to be approved by Class. Such plan is specific to each ship and includes a detailed description of the actions to be taken to implement the ballast water management requirements and practices. It will include a description of the ballast water pumping and piping system, details of the ballast water treatment system, maintenance, procedures for

WHAT'S NEXT FOR THE BALLAST WATER MANAGEMENT CONVENTION? (continued)

cleaning of ballast tanks and sediment management. Helpfully, Classification Societies provide templates for the preparation of the Plan.

Reg. B2 – Ballast Water Record Book
Each ship must have on board a ballast water record book to record all ballast water movements.

Reg. B6 – Duties of officers and crew
Ship's officers and crew must be familiar with their duties in the implementation of the ballast water management system particular to their ship and shall, appropriate to their duties, be familiar with the ship's ballast water management plan. Key to compliance with this Regulation is the need for adequate training of ship's officers and crew.

What are the remaining issues and concerns?
Despite the fact that the Convention may enter into force quite soon, there are a number of outstanding issues and concerns. The most significant are addressed below:

1. Lack of confidence in the equipment – G8 Guidelines (Type Approval)

Many owners have already spent a considerable amount of money in installing a ballast water treatment system. Can they have confidence that their system will continue to comply with the regulations? Secondly, can owners be confident that the system they chose may continue to be compliant? Guideline G8 of the Convention which deals with the type approval of ballast water treatment systems (BWMS) expressly provides:

> "Approval of a system, however, does not ensure that a given system will work on all vessels or in all situations..."

Some progress has been made in this respect following the acceptance that the original G8 Guidelines were not robust enough to provide reliable equipment. At the IMO MEPC 67 meeting in October 2014, it was agreed to immediately start a comprehensive review of G8 and that owners that had already installed equipment approved to existing G8 Guidelines (the "early movers") should not be penalised. Further, it was agreed that Port States should refrain from imposing criminal sanctions or detaining the ship based upon sampling during a trial 2 to 3 year period. Notably, the USA reserved its position.

Progress was made at MEPC 68 in May 2015 but the working group has continued its review and will report again to MEPC 69 in April 2016. MEPC 68 reviewed the non penalisation of early movers. Whilst the non penalisation may be subject to review as additional information becomes available, it was accepted that installed BWMS approved to the current G8 should not be required to be replaced once new guidelines are introduced. Further, if current systems are installed, maintained and operated correctly then they should not

be required to be replaced for the life of the ship or the BWMS, whichever comes first. Early movers should also not be penalised solely due to occasional exceedance of the D-2 Standard.

In the meantime, it is important to note that as of February 2016 no BWMS had yet been approved for use in the USA which has its own ballast water discharge requirements. Owners trading to USA are obtaining extensions from USCG pending full type approval or using "Alternative Management Systems" (AMS) which is a BWMS approved by other Administrations in accordance with the current G8. More than 50 of such systems have been accepted by USCG. An AMS may only be used for 5 years beyond the date when the ship would otherwise have to comply with USCG ballast water discharge requirements. However, it is not guaranteed that such AMS will eventually get US type approval.

2. Sampling and analysis – what inspections may owners expect?

At MEPC 65 in May 2015, IMO agreed upon a trial period of up to 3 years following Entry into Force in order to trial sampling and testing procedures. During this period Port States should refrain from detaining a ship or initiating criminal sanctions in the event that a BWMS does not meet the discharge standard. The USA reserved its position.

The above follows concerns that the obtaining of representative samples, and consequently reliable test results, may be very difficult given that organisms may not be evenly distributed within the ship's ballast water. Similar concerns exist in relation to form of analysis to be undertaken.

At MEPC 67 in October 2014, IMO adopted Guidelines for Port State Control inspections with a 4 stage approach:

Stage 1: Initial inspection to focus upon the documentation (ballast water management plan and record book) and crew training to operate the BWMS.

Stage 2: More detailed inspection to check that the BWMS operates properly.

Stage 3: Indicative sampling. Without unduly delaying the ship, an indicative analysis of ballast water can be taken.

Stage 4: Detailed analysis. If indicative sampling exceeds the D-2 Standard by a certain threshold, a detailed analysis of ballast water can be taken.

Looking ahead, there remain concerns about sanctions for infringement of the Convention. What will happen if a sample is found to be non-compliant? What happens to cargo operations if a ship is unable to discharge her ballast? Will sanctions be limited to a fine or will there be criminal charges? Will sanctions be enforced uniformly across Flag States? Hopefully, these concerns will be addressed during the trial period.

3. Lack of shipyard capacity

It is estimated that some 57,000 ships will have need to comply with the Convention. Hence, there has been a serious concern that there will be a lack of shipyard capacity. The revised implementation schedule that links a ship's compliance to her first IOPP renewal survey will help to alleviate this problem. Latest 3D scanning techniques are assisting owners in more efficient planning of how and where to retrofit systems on board. Nevertheless, there remains a concern.

4. Purchase of equipment

A number of different ballast water treatment systems and manufacturers are available on the market. There must be a question as to how many will still be around in future years. A number of issues face owners, not least of which is the cost. Owners need to take advice on the suitability of equipment. Can it be modified or upgraded if type approval changes? What sort of warranty is available? What service and maintenance contract is available? Owners will no doubt work hard to negotiate the best deal with manufacturers.

5. Lack of shore facilities

There remains a concern about a lack of shore treatment and reception and testing facilities. Efforts are ongoing to establish these.

Conclusion

The Convention's entry into force is now imminent. Whilst it will not be in 2016, it seems most likely to be during 2017. Therefore, owners must now be taking steps towards compliance. Owners need to consider if they can take advantage of the A-3 and A-4 exceptions and exemptions otherwise they need to be looking to install a type approved ballast water treatment system.

There remain a number of outstanding issues and concerns but the implementation schedule following entry into force is not going to change and owners need to be ready.

FEATURE

REMOVING SANCTIONS ON IRAN... ARE WE THERE YET?

On 16 January 2016, EU, UN and US Secondary sanctions were partially lifted. This was a long time coming for many in the shipping industry, but just how close are shipowners and charterers from trading with Iran, free of additional compliance risks and burdens brought by sanctions? Senior Claims Executive, Lyall Hickson explains.

Background

Most shipowners / charterers will be familiar with sanctions which have, in recent years, been imposed on Iran, primarily by the UN, US and the EU, including in broad terms prohibitions on:

- US persons, including US financial institutions, from doing business in or relating to Iran;
- dealings with designated entities and individuals; and
- Iranian related trade, prohibiting the purchase/sale and/or transport of certain Iranian cargoes (primarily crude oil, petroleum or petrochemical products or gas) or the provision of insurance (including P&I insurance) in respect of the carriage of those cargoes.

In July 2015, the Joint Comprehensive Plan of Action (JCPOA) was agreed between the P5+1 countries and Iran with aim of removing certain sanctions in exchange for Iran restricting its nuclear programme.

Lifting of Sanctions

On 16 January 2016 (Implementation Day), EU and UN nuclear-related economic and financial sanctions against Iran were lifted. This included the delisting of many UN and EU entities and individuals.

US secondary legislation imposing nuclear-related economic sanctions were also suspended. US secondary sanctions restricting foreign subsidiaries from trading with Iran were also largely relaxed.

Significantly, the lifting of sanctions paved the way for the transport and trade of oil, petroleum and petrochemical products to/from Iran which was previously prohibited. The lifting of these legal measures obviously presents opportunities for those in the shipping sector.

What still remains?

Despite the lifting of sanctions, it is important to bear in mind that there still remains certain restrictions on trading with Iranian entities, under both EU/UN and US sanctions programmes.

EU/UN

There are now very few legal restrictions on EU entities wishing to trade with Iranian entities, but they have not all been removed. The EU restrictive measures which remain in place largely relate to military goods; weapons; and, items that might be used for internal repression. There are also some entities and individuals which remain listed and which remain subject to asset freeze measures.

The US Angle

However, the sting which remains is the US primary sanctions. In particular, US primary sanctions prohibit US persons, including US financial institutions, from doing business in or relating to Iran. Significantly, this means US Dollar transactions with Iran are still prohibited.

In addition, some entities are still listed as Specially Designated Nationals (SDNs) and these may be different to EU/UN Asset Freeze targets. It is important to bear in mind that secondary sanctions may still be imposed on foreign entities and individuals for providing assistance to US SDNs. In the worst case, there is a risk of a foreign entity itself being designated as an SDN if they provide assistance to certain SDNs (this depends on the designation tag of the SDN in question).

Snap Back

An integral part of the JCPOA is the “snap back” provision which will re-introduce restrictions if Iran breaches its side of the deal. The risk of “snap back” of US sanctions, as well as the introduction of new sanctions against Iran cannot be underestimated in view of recent comments by US Presidential candidate Donald Trump. He has stated that his “number one priority is to dismantle the disastrous deal with Iran”.

In view of the above, whilst significant positive steps have been made towards removing sanctions concerning Iran, there still remain restrictions as well as practical considerations posing continued challenges for a Member trading to/from Iran.

Due Diligence

The practical advice for Members is that they should continue due diligence checks on counterparties and to screen cargoes to ensure they do not fall foul of sanctions. Parties interested in trade to/from Iran should also ensure that there are no restrictions in their insurance or finance arrangements that preclude conducting business with Iranian entities.

P&I Cover

All of the International Group (IG) Clubs have Rules under which the Member has no P&I cover in respect of activities or liabilities which breach applicable sanctions, or otherwise expose the club to sanctions or to the risk of sanctions.

In addition, all IG Clubs have Rules which prohibit or limit a Member’s right of recovery from its Club if, because of the application of sanctions, there is a shortfall in the Club’s reinsurance (which includes any shortfall under

the IG Pooling Agreement, General Excess of Loss programme or any other reinsurance arrangement).

With the lifting of certain sanctions on 16 January, whilst the risk to a Member's right of recovery for Iran related claims has considerably reduced, continued existence of the US primary sanctions has meant that (at least until recently) P&I Clubs could not offer adequate, effective insurance cover in relation to liabilities involving Iranian interests.

Effect of sanctions on Pooling and the Group Reinsurance (Excess of Loss)

For the 2016/17 policy year, individual clubs will retain the first USD10 million of liabilities arising from an incident. Between USD10 million and USD80 million, liabilities are shared between all 13 IG Clubs (the Pool). If any of the 13 IG Clubs is prohibited (by sanctions applicable to that Club) from contributing their share of any Pool claim, the individual Member will bear that shortfall in accordance with the applicable Club's rules.

During the immediate aftermath of the lifting of sanctions on 16 January, Members were advised of the risk of a shortfall at the pooling level by virtue of the American Club being subject to US Primary sanctions (as the Club is domiciled in the US). However, this problem has now been solved following the issuance of an OFAC licence which, in most circumstances, would enable the American Club to contribute its full share of any pool claim notwithstanding the involvement of an Iranian entity or person (other than an Iranian SDN).

Similarly, Members were also advised of the risk of a shortfall at the Group Reinsurance level which covers liabilities above USD80 million. This is because there is about a 17% security participation in the Group Reinsurance by US domiciled reinsurers. A significant further proportion of the programme has a US nexus, which may impact upon the ability of non-US domiciled but US affiliated or subsidiary reinsurers to pay a claim which their US domiciled parent or affiliate would be prevented from paying by virtue of the continuing US primary sanctions.

The IG has been trying to persuade the US Government to grant a licence to US-domiciled reinsurers to participate in the Group Loss Reinsurance (Excess of Loss) programme (and Hydra retrocession programme). This is the only effective long term solution. However, it is not a quick solution in view of it posing fundamental policy questions for the US Administration which will need to be resolved.

The positive news is, however, that the IG has found an interim solution, so that Clubs can offer cover to facilitate trade with Iran. The interim solution is the obtaining of a "fall back" cover placed with non-US reinsurers. The cover is an annual cover in respect of P&I liabilities, whether or not these arise under approved certificates or guarantees (e.g. such as Blue cards and STOPIA/TOPIA). It provides indemnity in respect of claims which would otherwise have been recoverable under the Group Reinsurance (Excess of Loss) programme, US domiciled private placement and the Hydra retrocession reinsurance programme, but for an inability to pay by US domiciled reinsurers by virtue of continuing US primary sanctions. Details of the key features of the cover are outlined in Circular 5/16: Iran trading – P&I cover update.

The practical advice for Members is to also check whether US primary sanctions effect their other insurances such as H&M and War Risks.

Banking Issues

With the lifting of certain sanctions against Iran, EU banks can now legally process transactions with Iranian banks (provided no designated individual or entities are involved). The requirements for authorisation or notification of certain transfers are also no longer applicable. The lifting of US secondary sanctions also reduces the risk for no-financial institutions. However, despite this progress the Banks remain nervous, if not bullish on occasions, to process payments related to Iranian interests. This is no doubt due, in part, to the significant fines a number of banks have received in the past from the US authorities for breach of sanctions.

The reluctance of banks to process payments to Iran poses a significant practical restriction on Iran related transactions even though no legal restriction may exist. This has a potential knock on effect on insurers, since even if an underwriter is willing to cover Iran related business, these practical issues may cause delays with regard to providing security and/or payment of claims to Iranian third parties.

However, the UK banks in particular are coming under significant political pressure to process payments to Iran. There are a small handful of EU banks and other foreign banks that are willing to process payments to Iran. It is therefore hoped that this hurdle will fade away shortly.

The practical advice for Members is to secure payment routes for Iranian related business in advance.

REMOVING SANCTIONS ON IRAN... ARE WE THERE YET? (continued)

Sanctions Clauses

In light of the above, the practical advice for Members is that they should continue to try and include a bespoke charterparty clause addressing sanctions risks in contracts of carriage. It is appreciated, however, that of the inclusion of such a clause (and its terms) will depend on the relative bargaining positions of the parties. It could be argued that in view of the serious consequences which might arise from a breach of sanctions, it is a clause worth fighting for.

The BIMCO Sanctions Clause for Time Charterparties is a very good starting point. The main objective of the clause is to provide owners with a means to assess and act on any voyage order issued by a time charterer which might expose the vessel to the risk of sanctions. The test is one of "reasonable judgement" by the owners in determining whether the risk of the imposition of sanctions is tangible. Importantly, the clause addresses the possibility of sanctions being subsequently applied after an order for employment.

However, it is arguable that the clause does not go far enough. A more comprehensive wording is preferable, providing, for example, warranties from Charterers regarding the status of all parties involved, as well as regarding cargo screening; indemnities from the Charterers in relation to breach of the sanctions clause; and addressing the risk of "snap back" of the sanctions. There may be other specific provisions which should be included depending on the particular trade. The Managers have considerable experience with sanctions clauses and can assist with review of proposed wordings. However, it is important to bear in mind that a sanctions clause does not guarantee protection from sanctions risks and it is unlikely to be sufficient to simply rely on the warranties and information of counterparties as evidence of sanctions compliance. Accordingly, parties are recommended to ensure their own compliance with applicable sanctions regimes and to exercise appropriate due diligence in respect of any applicable transaction under the Charterparty.

Conclusion

It is clear that despite significant relaxation of sanctions against Iran, there still remains a need for Members to remain vigilant to ensure compliance with Iran Sanction regimes and also to look ahead at potential practical issues (such as banking), affecting a potential trade to / from Iran.

The Club is very experienced in dealing with these issues. Should you have a sanctions query please contact your usual Club contact.

"Dismantle the disastrous deal": Trump tells AIPAC Iran deal is "number one priority", Joshua Roberts, Rueters, 22 March 2016
"Don't block exports to Iran, banks told", Patrick Hoskings, The Times, 10 March 2016

OUT & ABOUT

IONIC UNICORN – Naming Ceremony 18th March 2016

Marc Jackson was honoured to be invited to the naming ceremony of the IONIC UNICORN, a 34,568 GT ultramax bulk carrier at the Mitsui Engineering and Shipbuilding yard, Chiba, Japan. The formalities began with a dinner hosted by the buyer, Ionic Holdings Inc. a Glyfada based Member the night before. The dinner was attended by the owners' party, as well as representatives of both the yard and the trading house, Itochu. The naming ceremony itself took place on the morning of Friday 18th March at the Mitsui Yard. Marc Jackson was given the honour of naming the ship, which was then christened by Mr Vangelis Nomikos of ABN Amro Bank.

Following a tour of the ship, a celebratory meal was held at the yard's social club, during the course of which there was a ceremonial opening (with hammers) of the saké barrel and the exchange of gifts.

H1 Team on board

Major pollution incidents can be a nightmare for all parties involved, including the Owners of the ships and their Clubs. Numerous circulars have been published and several seminars have been held to assist, prevent and adequately deal with pollution incidents. The H1 team were invited to attend a pollution response program undertaken by EPE, Environmental Protection Engineering S.A.

The team went on-board the AKTEA OSRV, a vessel equipped to act in the case of a major pollution incident, which operates as a coastal tanker on a day-to-day basis and is, like other such vessels, on stand-by 24/7 should she be required to assist in any emergency pollution incident within the European Union.

A fictional voyage and infectious diseases – it's the UKDC Seminar!

The UKDC December Seminar is becoming a welcome tradition in Limassol, Cyprus, with increasing audience year after year. This year, over 60 delegates, drawn primarily from the Clubs regional Members and shipping community in general, participated in an exploration of issues arising from unsafe ports. This year's theme was "Safe Passage".

Safety is a fundamental component of any fixture, attracting significant liabilities for Owners and Charterers in a marine adventure and, although it may seem a simple concept, there can be in fact a plethora of legal difficulties arising out of this.

The seminar, in the form of a fictional voyage, explored the concept of legal safety by considering the issues that can arise in fixing and performing a standard bulk cargo charter party, during which the ship traded through war zones, navigated difficult rivers, grounded in shifting sands and called at ports with infectious disease. Emphasis was given to the different orders between a time and a voyage charter party and the significant different implications entailed in a "safe port" as opposed to a "safe berth", which also includes the waterway to the berth, warranty.

The UKDC panel navigated the legal and practical issues that emerged from this fictional voyage. To name a few, Owners'/Charterers' pre-fixture negotiation considerations from a safe port/berth and time/voyage charter perspective, as well as Owners'/Charterers' rights under the safe port and BIMCO War Clause provisions where the vessel is instructed to proceed to a port following the outbreak of war and/or under the safe port provision following the outbreak of a deadly virus and/or under the safe port provision following the vessel grounding.

The presentation was followed by drinks and canapés, which gave the delegates time to expand on the issues raised in a more informal and relaxing approach.

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