

UK P&I CLUB

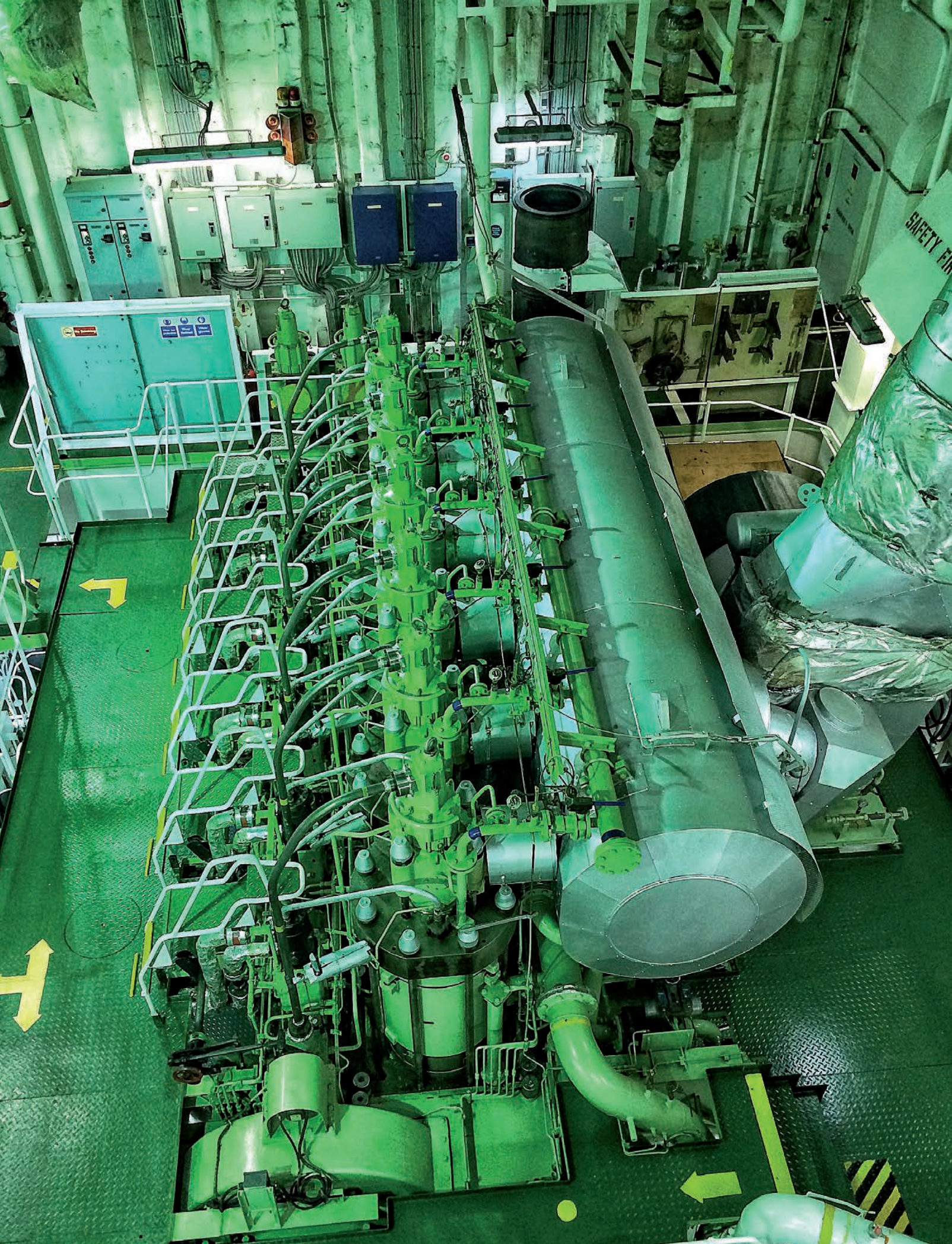


UKDC
UK DEFENCE CLUB
125 YEARS NEW

HELLAS HIGHLIGHTS

April 2014, Issue 29

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



PIRAEUS OFFICE

NEWS ROUND-UP

Office Changes

A number of changes will shortly take place in Thomas Miller (Hellas) Ltd's office. Rod Lingard has been the Syndicate Manager for Thomas Miller (Hellas) for over five years. During the past five years there has been a growth in the Membership handled by the office, an increase in personnel along with an office refurbishment. Rod will be retuning to London in July 2014 where he will become the Joint Managing Director of Thomas Miller War Risk Services, working alongside Andrew Ward. Rod will have particular responsibilities for managing the Hellenic War Risk Association.

Reinforcing our commitment to the Greek market Daniel Evans will return to the Thomas Miller (Hellas) office to oversee its activities. Daniel will continue his roles as Regional Director as well as continuing as Club Manager for Thomas Miller Defence. Daniel will be known to most of you having previously spent five years based in Piraeus from 1998 - 2003.

From time to time changes occur in every office and we hope you will find these moves positive, with the minimum of disruption to your existing relationships or claims servicing.

Charity

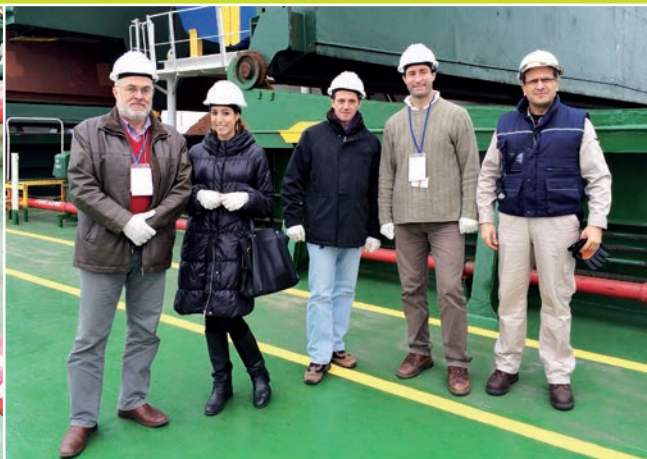
During the second half of 2013 and first quarter of 2014 Thomas Miller (Hellas) Ltd and the UK P&I and UK Defence Clubs have made donation to the following charities:

- The Centre for the Protection of Children & Orphanage of Attica "MITERA" (used to be known as P.I.K.P.A. Pendelis).
- The Metropolitan Community Clinic at Helleniko and Doctors of the World-Greece. This also included a donation of unexpired medical prescriptions.
- The Lyreio Ecclesiastical & Children's Foundation.

THALASSA PATRIS

Rod Lingard, Alex Couvadelli and Marc Jackson were invited to attend on board the THALASSA PATRIS at the Piraeus Container Terminal on 23rd January 2014. This was the ship's maiden call at Piraeus and ENESEL S.A., held a blessing ceremony followed by a lunch reception.

The THALASSA PATRIS, which is entered in the UK Defence Club, was built by Hyundai Heavy Industries Co. Ltd. and launched on 6th September 2013. The ship is 368.47 metres in length, has a breadth of 51 metres and a summer draft of 15.82 meters. Her deadweight is 152,343 and she is capable of carrying 13,800 TEUs. Many thanks to all at ENESEL S.A. for organising the excellent visit.





SUPRAMAX BULKER VISIT

Efcharis Rocanas and Nick Milner took the opportunity to visit a new Member's Supramax bulker discharging nickel ore fines from Indonesia at Thessaloniki on 5th February 2014.

Named after the famous lighthouse in North Andros the FASSA was built, at the Nantong COSCO KHI Yard ("NACKS"), COSCO's joint venture with Kawasaki Heavy Industries, in 2006.

Cargo operations in the holds and maintenance work in the engine room were ongoing during the comprehensive tour. Whilst falling short of a full ship inspection their visit took in the Monkey Island, bridge, accommodation, hatches, forepeak, engine room and even a wing ballast

tank. Using a sample from the cargo, the First Officer demonstrated a 'can test' which was passed with flying colours. Accompanied by the owner, Port Captain and Technical Manager, they found themselves standing in the ship's "citadel", counting reels of razor wire in the Bosun's Store, squinting at dials in the engine room and marvelling at the stash in the Cook's fridges.

All in all, the visit provided them with a hugely informative insight into day-to-day ship operations while in port.

Thanks go to Mr Ghikas Goumas and Equinox Maritime for making Haris and Nick feel so welcome and giving up time from their busy schedules to host the visit.



FEATURE



Claims Handler, Efcharis Rocanas reports on her recent experience of shortage claims in Tunisia.

REAL & “PAPER LOSS” CLAIMS IN TUNISIA

High risk of shortage claims for grain cargoes.

Ships delivering grain to Tunisia are faced with a high risk of shortage claims, these shortage claims can either be real actual shortages resulting from spillage, leakage from grabs, theft or “paper losses” caused by measurement differences and calculations. In either case, requests for pre-emptive guarantees are becoming all too common. While discharge operations are still ongoing, Receivers claim that there will be a shortage upon completion. In effect, the shortage figures claimed constitute an estimation by Receivers of what the total cargo discharged will be at completion. The ultimate threat behind this request is arrest and dealing with the allegation can be costly, entailing delays and frequently, the need to issue bank grantees so as to release the ship and defend the allegations.

The Club's local Correspondents have made great progress in negotiating with Receivers and in protecting Owners' interests. They monitor the situation and negotiate with a view to delaying the issuance of guarantees until the amount claimed is significantly decreased or eliminated altogether. “Paper” shortage claims in Tunisia are a very real issue, understanding how receivers work can help deal with the problem.

Tunisia and Office des Cereales

There are several private grain importers in Tunisia; One of the main importers is Office des Cereales (ODC). ODC is an unusual receiver since it is state owned and relies solely on shore

scale figures. In addition ODC will only agree to settle a claim at a very high percentage of its original claimed figure.

ODC – the Inner Workings

For shortage claims there are two main departments in ODC: the Operations Department and the Legal Department. While a vessel is discharging the Operations Department is in charge of the file. Once discharge operations are complete it is in the hands of the Legal Department. This administrative separation is marked by a very different level of flexibility. The Operations Department is more amenable to negotiate the levels of an alleged shortage and the guarantee



REAL & “PAPER LOSS” CLAIMS IN TUNISIA (continued)

amount requested, if any. The Legal Department, in contrast, is very rigid and quick to make threats of arrests or even long term threats against the Owners in terms of accepting to trade with them in the future.

The local correspondents encourage negotiation while the matter is still handled by the Operations Department of ODC and, if a pre-emptive guarantee is still requested by the time the matter is about to enter the legal department’s jurisdiction, i.e. by the time the discharge operations are nearly finished, they recommend that the Club provide one.

Once discharge operations are completed, ODC will look at the shore scale figures and, depending on the result, will present a claim. ODC do not accept any trade allowance and will, ordinarily, only agree to settle at a very high percentage of their original claim (usually around 80% to 90%).

Weighing the Cargo

ODC relies on the shore scale figures rather than the draft figures, one of their reasons for this is that the shore scale figures are declared to Customs. The reliance on shore scale figures generates two other

potential issues: Loss of cargo during transportation to the scale and the reliability of the weighing at the scale.

Cargo is usually transported to the shore scale by truck. It is possible that cargo which has been properly discharged from the ship is then lost while being transported to the scale. The Correspondents recommend dealing with this issue by appointing experts to monitor this transfer. Thanks to this monitoring, the transfer of cargo from the quay to the shore scale and the weighing itself are executed with more documentation

and control. This, in turn, enables a more favourable position for negotiation if there is a shortage.

Cargo can also be discharged directly into silos where it is weighed through an electronic weighing machine. ODC have their own silos in three ports: La Goulette, Bizerta and Gabes. In those ports, when silos are full, ODC continues by transporting the rest of the cargo by truck to be weighed in the port shore scale.

Other private companies discharge cargo only by trucks. They generally proceed to weigh the cargo on the shore scale but some opt to weigh it in their own warehouses and with their own scales pursuant to the authorisation of the customs authorities.

Room for improvement

The position is now that we can monitor the discharge operations and are able to negotiate guarantee requests, while the matter is still handled by the Operations Department of ODC and can settle a claim, in an amicable manner, albeit at a high percentage of the original claimed amount, if we choose not to pursue litigation.

Pre-emptive monitoring is frequently undertaken by a Court Sworn Surveyor, appointed by a judge. The Surveyor will be an independent third party, who will draft a report on the discharge operation and its result, which, if in their favour will be used by ODC in requesting a guarantee or making a claim.

Some Owners – in order to have more control of the process – will appoint an additional Surveyor to monitor the situation. Supervision and monitoring from both Correspondents and Surveyors has generated favourable results with some requests for guarantees not being pursued and others being pursued in a more favourable manner.

The relative evidential value of what is collected throughout the discharge operations can be listed in the following ascending order from weakest to strongest:

It is, therefore very important to monitor the discharge operations and the transportation of the cargo from the quay to the scale.

- i. independent draft survey report
- ii. report by a court sworn surveyor acting independently
- iii. court appointed surveyor's report
- iv. figures of shore scale

It is important to keep ODC's state entity status in mind. The local Correspondents are advising that the climate is currently such that it enables them to hope that they will soon be able to forge better relations with the officials in ODC. This, in turn, will result in more productive negotiations. It remains, however, a very different entity compared with other receivers in other parts of the world. Similar difficulties are encountered in Algeria, stemming mainly from the bureaucratic nature of the underwriters.

Despite some improvement, thanks to the use of the practices

described, claims in Tunisia are still often brought where there are no actual shortages and settlements remain at high percentages of the original claimed amount.

If the matter is litigated, the odds of an award in favour of the Owner are extremely low. In some first instance courts transit loss has been accepted but this is always appealed by ODC and overturned by the higher courts.

Attempts to avoid this problem by relying on jurisdiction clauses in charter parties and bills of lading have been unsuccessful in practice. Arbitration awards given in favour of Owners cannot be enforced in Tunisia and finding ODC's assets outside of Tunisia has proven impossible.

It is, therefore very important to monitor the discharge operations and the transportation of the cargo from the quay to the scale. Appointing a court surveyor to document and monitor the process and to maintain contact with the operations department of ODC, throughout the discharge operation, has proven helpful. Ultimately, the aim is to render trade with ODC no different than trade with any other receiver. For the time being however taking the small steps mentioned to achieve this may be the most effective way to proceed.

Efcharis Rocanas joined Thomas Miller in 2013 after working in law firms in shipping law in both Greece and the UK. Efcharis has a double degree in English and French Law and has done a Legal practice Course.

As a Claims Executive Haris deals mainly with cargo claims.



SEA DOGS AND SCOUNDRELS

A full house gathered at the Londa Hotel's Alpha-Omega Room to watch as the Clubs' Cyprus Seminar tradition continued in December 2013 with "Sea dogs and scoundrels", a role-play in three acts.

The scripted production follows the fortunes of fictitious food-loving Cypriot tanker owner Charalambous Mezedofagos and his ship, the CHILLI SAUCE, during its charter service to unscrupulous local businessman and pastor, The Reverend Pemi Angowawaye (also fictitious!).

The adventure begins with the Owner and Charterer putting the final touches to the charterparty before lifting subjects. Shortly afterwards, the ship successfully carries out STS operations and brings several parcels of product ashore. Despite taking all reasonable measures to protect his ship, the owner finds the CHILLI SAUCE boarded by local pirates in the Gulf of Guinea. A crew injury, ransacking of the ship, cargo theft and a dispute over unpaid hire all follow in rapid succession.

After adopting an offensive strategy, Babis overcomes the various difficulties with the support of the Club. He starts Arbitration and, by threatening a Worldwide Freezing Order, he manages to recover significant losses.

Our thanks go to our guest role-players - George Zambartas of Zambartas Law Office and Stephen Askins of Ince & Co - and to Rod Lingard, Jim Roberts, Mark Mathews and Nick Milner of Thomas Miller who made up the balance of the cast.

Most importantly, however, we thank those of you in the Cypriot Shipping community who made the time to come and support our efforts. We only hope the production fulfilled its aim of generating interest in and informing on a wide range of topical themes in a mildly entertaining and memorable manner.

The Seminar was followed by a buffet cocktail reception for which we were delighted to have so many of our friends join us.



Arbitration: A relevant forum for dispute resolution?

The UK Defence Club annual seminar was held at the Galaxy room of the Athens Hilton hotel on Thursday 5th December. The seminar took the form of a debate on arbitration, and whether it still remained a relevant forum for dispute resolution in 2013 and, indeed, going forward.

A very distinguished panel of speakers was comprised of Mr Simon Picken QC of 7 King's Bench Walk, Mr Ian Gaunt, a senior LMAA arbitrator, Mr Thanos Thanopoulos, an Executive Director of Kyla Shipping and UK Defence Club Senior Director of Claims, Kieron Moore. Marc Jackson, the Senior Claims Director from the Club's Piraeus office was the moderator.

The event began with Mr Gaunt identifying a number of reasons why arbitration should remain favoured form of dispute resolution in the shipping industry, which included enforcement, confidentiality, the ability to select ones own arbitrator, the relative informality (in comparison to the court) of arbitration procedures, the Small Claims Procedure and, with a degree of hesitation, cost.

The panel then covered various issues arising from those particular topics, starting with the constitution of a tribunal and the benefit of being able to select ones own arbitrator, as against the perceived problem of law firms having their favourite arbitrators. This was compared to the situation of the High Court when you are allocated your judge and have no choice in the matter.

There was some discussion about interlocutory procedures, and Mr Gaunt made the point that arbitration tribunals do have tools at its disposal to make sure that arbitrations proceed insidiously and smoothly. However, both Mr Moore and

Mr Thanopoulos took the view that although those tools were available, they were not used often enough.

The debate then moved on to the area of quality of awards, as against court judgment and both Mr Picken and Mr Moore thought that the quality of judgments was far higher. In terms of enforcement, Mr Gaunt highlighted that it is generally easier to enforce arbitration awards than it is to enforce court judgements abroad.

Mr Moore and Mr Thanopoulos both expressed the view that costs of arbitration generally were far too high and the questions that were raised about the lack of transparency in terms of arbitrators' costs, and a perceived failure by tribunals generally to control costs. Mr Gaunt acknowledged that there is probably more that tribunals could do in this regard.

The question of appeals was also considered. Appeals through the courts are relatively easy, in comparison with arbitrations, which – quite deliberately – have restricted rights of appeal, particularly so in Singapore. Attention was drawn to the judgment in the recent KYLA case in which the Court of Appeal effectively said that if the parties wanted to avail themselves of the expertise of the court, they should allow for High Court jurisdiction in their contracts. This lead on to a question to the audience as to whether finality was important and the majority said that they would prefer to have less restricted rights of appeal.

The seminar culminated with the Club's Manager, Daniel Evans, drawing together the strands of the various issues discussed before a drinks reception.





PEME in Greece

The Pre-Employment Medical Examination (PEME) programme is the leading loss prevention initiative within the UK P&I Club. Clinics, which are approved under the programme, are held accountable to both the Club and Members for their performance.

The scheme is designed to protect shipowners from claims arising from medical conditions existing prior to employment, and to provide crew with a first rate health check before going to sea. This programme is the most extensive and inclusive system available in the industry. To date the Club has completed nearly 300,000 crew examinations by an approved network of 54 clinics in 19 countries.

The current financial depression has seen an increase in the number of young Greeks going into seaborne service and the merchant navy academies which has encouraged the Club to look at approving a clinic in Greece so that the locally based members can also benefit from the programme.

Advanced discussions are taking place with local diagnostic centres and their accreditation

process is nearing completion. In fact, an official announcement is scheduled within the course of this month.

We hope that our local Members will participate in a proven system for managing this aspect of crew risks and benefit by having a healthier crew and avoid some avoidable interruptions, as sickness incidents are not just medical costs, and sick wages that are at stake. An unfit crew member may cause a major accident due to illness and the owner's potential exposure could run to a liability of several hundreds of thousands of dollars due to normal contractual obligations and to millions of dollars in worse case scenarios.

To find out more about the benefits of the PEME programme download the latest brochure from our website or alternatively email the PEME team peme.ukclub@thomasmiller.com.

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