



Edition 30th December 2016

LOSS PREVENTION NEWS

Crew health: Maintaining mental wellbeing (Shipowners)

Seafarers' conditions vary across industries and there is a need to better minimise, identify and remedy mental health problems among crews. Mental health continues to be a cause of Club claims and because mental health problems are under reported, especially among contractual workers, Club data is unlikely to paint an accurate picture of the extent to which mental health is an issue among our particular tonnage of smaller and more specialist vessels. It is also likely that some claims relating to pain, such as back, or stomach pain, may mask accompanying mental health concerns.

[Read more](#)

Social Media - A Sailor's Guide (North of England)

INTERTANKO has issued guidelines on the use of social media at sea. These guidelines outline the power of such media platforms, and the possible impact for individuals and companies alike. This includes the use of social media during times of emergency on board.

[Read more](#)

Engine Room Fires (UK Club)

The UK Club has teamed up with experts in forensic investigation, Burgoyne's, to produce the latest Risk Focus on Engine Room Fires.

[Read more](#)

Increasing bunker disputes (Shipowners)

The Club has recently experienced an increase in the number of bunker quality dispute claims arising from the delivery of allegedly off-specification or contaminated bunkers. These claims have ranged from variation in the parameters of the bunker supplied to presence of contaminants, such as ash and microbes. These claims can result in expensive claims not only because of the bunkers themselves but also related costs such as machinery damage, time lost, tank cleaning costs.

[Read more](#)

CHIRP - Further advice for seafarers to help avoid incidents (Standard)

The Standard Club is working with the Confidential Hazardous Incident Reporting Programme (CHIRP) to promote safety at sea and accident prevention. CHIRP receives reports of hazardous incidents which they investigate with the ship's owner.

[Read more](#)



Ignoring Alarms (Shipowners)

The Club would like to bring to our Member's attention a USCG safety alert regarding the ignoring and silencing of on board alarms and the possible consequences of failing to take proper actions in such situations.

[Read more](#)

Maintenance and Adjustment of Magnetic Compasses (Steamship)

The AMSA has advised that Vessel owners and masters each have responsibilities for ensuring that magnetic compasses are maintained in good working order, adjusted and a table or curve of residual deviations is available. The performance of the compass should be monitored and, for a vessel more than 100GT, deviations recorded in a compass deviation book at regular intervals, ideally at least once every watch and also shortly after a large alteration of course. Failure to maintain a magnetic compass in good working condition or to monitor deviations may result in a vessel being delayed or detained and potentially the vessel owner and/or master being prosecuted.

[Read more](#)

Focus on Philippines: NCM (UK Club)

In this final part of our Focus on Philippines series, UK Club Senior Claims Director, [Tony Nicholson](#), who also chairs the Philippine working group of the International Group of P&I Clubs' personal injury subcommittee, and Senior Claims Executive Stephen Michaels look at the issue National Conciliation and Mediation Board.

[Read more](#)

Carriage of Calcium Hypochlorite Guidelines (Steamship)

The practices set out in the new Guidelines are intended to allow the carriage of Calcium Hypochlorite under controlled circumstances, to ensure that it is properly declared, packaged and carried. The practices are also intended to encourage carriers to have the confidence to accept the commodity for shipment under an acceptable method.

[Read more](#)

Calcium hypochlorite: it's back and hiding in plain sight (Steamship)

A recent article Calcium hypochlorite: it's back and hiding in plain sight by Rory Butler, Partner and Alex Kemp, Senior Associate of Holman, Fenwick Willan has outlined the risks associated with transporting calcium hypochlorite.

[Read more](#)

The IG's large casualty working group updates recommendations for handling major casualties (Standard)

The working group has now concluded a review of a further six major casualties that have occurred since 2012 and updated its conclusions and recommendations. The key issues considered were:

[Read more](#)

New Guidance on LPG blending/commingling from Intertanko (Standard)

Intertanko has released its '*Guide to the blending/commingling of LPG cargoes on board Gas Carriers*'. This publication has been produced to aid ship owners with LPG interests and to address the relative lack of external guidance on the issue of blending/commingling of LPG cargoes.

[Read more](#)

MARKET NEWS

Hanjin Shipping - Korean Rehabilitation Proceedings *Update* (North of England)

We refer to our previous Industry News update dated 16 November 2016, relating to Hanjin Shipping. Since that update, the court-appointed Receiver of Hanjin Shipping has on 5 December 2016 published his decision on affirming/rejecting the various general rehabilitation claims filed in the rehabilitation proceedings.

[Read more](#)



International Group signs Funding of Interim Payments Agreement with the 1992 IOPC Fund (IG)

The Agreement on Standard Terms Relating to Interim Payments (2016) and accompanying terms and conditions sets out the basis on which individual Group Clubs and the 1992 IOPC Fund will agree to treat interim payments made by the two paying parties in the event of future 1992 CLC/1992 IOPC Fund incidents.

[Read more](#)

LEGAL NEWS

New Year – New Regulations (North of England)

The 1 January is traditionally a day when new legislation and amendments to existing regulations come into force. The year 2017 will be no different. New regulations that may affect your operations include:

- International Maritime Solid Bulk Cargoes Code (IMSBC Code) (MSC.393(95)),
- International Maritime Dangerous Goods Code (IMDG Code) (MSC.406(96)),
- International Code for Ships Operating in Polar Waters (Polar Code),
- International Convention for the Prevention of Pollution from Ships (MARPOL) Annex I,
- International Convention for the Safety Of Life At Sea (SOLAS),
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW),
- International Code of Safety for Ships using Gases or other Low-flashpoint Fuels (IGF Code),
- China Emission Control Areas

[Read more](#)

Important clarification of certification requirements – MLC 2006 / Amendments 2014 (Shipowners)

... the 2014 MLC Amendments have introduced a measure of ambiguity on this tonnage threshold point. It may be possible for you to check with your relevant flag state to ascertain their expectations with regard to certification for vessels below 500GT.

[Read more](#)

Retroactive requirements for engine room sludge piping systems - 1 January 2017 (Swedish Club)

Regulation 12 of MARPOL Annex has been amended, now making it a retroactive requirement for all vessels irrespective of delivery date, effective from 1 January 2017.

[Read more](#)

Lloyd's Open Form - a contract on the rocks? (Standard)

In recent years, there has been a marked decline in the use of LOF in favour of commercial contracts, often the 2010 versions of the BIMCO Wreckhire, Wreckstage and Wreckfixed forms. In this web alert we explore possible drivers behind this trend, question whether LOF is likely to have a future in the modern world of salvage and wreck removal and propose some solutions to arrest its decline.

[Read more](#)

GUARDCON and Firearms - The importance of clause 10 of GUARDCON (Standard)

BIMCO has recently updated the guidance with respect to clause 10 of GUARDCON with a view to underlining the importance of validated firearms and user certificates.

[Read more](#)

What is the attorney-client privilege and why is it important? (Gard)

Most of us know that communication with our lawyer is confidential. Few of us know why this is so. We put the question to American lawyers John Cox and Erin Weesner-McKinley. They explain how the attorney-client privilege operates in the United States, in criminal as well as civil cases. More importantly, they explain how easily the privilege can be lost.

[Read more](#)

English High Court considers apportionment of claims under the Inter Club Agreement (Steamship)

A recent English High Court decision has considered the effect of Clause 8 of the **NYPE Inter Club Agreement**, and in particular, the apportionment of "All other cargo claims" under clause 8 (d) where there is clear evidence that a claim arose out of an act of the Charterers.

[Read more](#)



Laytime WWD (Weather Working Days) (Skuld)

Laytime provisions in a charter are most often of a fixed duration. Without any further stipulation in the express terms of the contract, laytime of a fixed duration, such as allowing four days, runs uninterrupted. It is therefore common that the charter defines how time will run. An example of this is the use of the qualification "WWD" or, in its full style, "weather working day".

[Read more](#)

Issues with Quantities of Bunkers on Redelivery (Steamship)

... Whilst these are general rules, there are a number of areas in which disputes can arise in relation to the quantity of bunkers to be on board on redelivery and the price to be paid for those bunkers, particularly at times where the bunker market is volatile or profit margins are narrow. The purpose of this article is to discuss some of these issues and relevant arbitration decisions which provide guidance on these.

[Read more](#)

Gross vs. Simple Negligence (Steamship)

It is perhaps unlikely that as a matter of English law a definition of "gross negligence" will be formulated. The English law approach is to reflect the natural and ordinary meaning of the words (See article **A More Literal Approach to Construction**) and, as such, whilst always a question of construing the contract as a whole it is possible that "gross negligence" will be construed as meaning something more than mere negligence.

[Read more](#)

Clarification on consequential losses - Transocean Drilling UK Ltd v Providence Resources plc (Standard)

Providence sought permission to appeal against the Court of Appeal's decision. However, the Supreme Court has refused to grant permission which means that the Court of Appeal's decision stands. This is good news for our contractor members, but the Court of Appeal indicated that the position may have been different if the clause only referred to 'loss of use'. This is a helpful reminder that each case will turn on its own facts and the specific words in the clause, so it is essential to draft exclusion clauses clearly and avoid any ambiguity.

[Read more](#)

Funding of interim payments for pollution claims in CLC states (Standard)

On 18 October an Agreement between the IG clubs and the 1992 Fund Assembly concerning interim payments was approved for immediate sign off. This Agreement is a result of several years of negotiations between the Fund and the IG clubs and is now the template agreement for IG clubs and the Fund to use in future pollution claims in CLC states to agree how interim payments should be treated by both paying parties.

[Read more](#)

'Volcafe v CSAV' - Court of Appeal overturns judgment on order/burden of proof in cargo claims (Standard)

On 10 November 2016, the Court of Appeal set aside the High Court's decision in *Volcafe & others v CSAV [2015] EWHC 516* (Comm) that the carrier must first disprove negligence on its part before it can rely on its defences under Article IV Rule of the Hague Rules.

[Read more](#)

'MSC v Cottonex' 2016 - demurrage and abandoned containers (Standard)

The Court of Appeal held that the contracts were repudiated by the delay which frustrated the commercial purpose of the venture, MSC having no right to affirm the contracts at all since the contracts automatically came to an end. As a result of the shipper "any further performance by either party would be radically different from that agreed by the terms of the contract" and therefore frustrated. As a result MSC could only claim demurrage up to the date the contract became frustrated.

[Read more](#)

The 'Atlantik Confidence' - No Weakening of the Test to Deny Limitation (Steamship)

"The vessel was deliberately sunk by the master and chief engineer at the request of Mr. Agaoglu, the alter ego of the Owners. In those circumstances the loss of the cargo resulted from his personal act committed with the intent to cause such loss. The loss of the cargo was the natural consequence of his act as he must have appreciated. There can be no doubt that he intended the cargo to be lost just as much as he intended the vessel to be lost. It follows that the Owners' claim for a limitation decree must be dismissed."

[Read more](#)



Maintenance - Test Whether the Claim is Unreasonable (Steamship)

... Therefore, taking into account all of the above, the court found in favour of the crewmember and granted his motion for an increased rate of daily maintenance.

[Read more](#)

Unpaid Freight - A Debt or Claim in Damages?

In the recent case of *D'Amico Shipping Italia SPA v Endofa DMCC & Anor* (2016) the vessel owner applied for summary judgment that a balance of freight was due and owing from the voyage charterer. The Court was required to consider if the freight was payable as a debt or as damages. Whether the claim was for a debt owed or in damages was important because the issue of mitigation is relevant to a claim in damages but not to a claim in debt.

[Read more](#)

SANCTION NEWS

Cuba: Sanctions overview (Shipowners)

[Read more](#)

Update of Sanctions Summary Matrix (Japan Club)

[Read more](#)

PIRACY NEWS

ReCAAP ISC issues monthly report on piracy in Asia (Standard)

ReCAAP ISC has published its monthly report on piracy and armed robbery against ships in Asia. In November 2016, a total of 10 incidents were reported, of which six were actual incidents while four were attempted incidents.

[Read more](#)

EU Council Decision to extend the mandate of operation Atalanta until December 2018 (IG)

On 28 November 2016, the EU Council, following a strategic review, confirmed the extension of the mandate of operation Atalanta to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery of the Somali coast until December 2018. The combined naval involvement of EU member states has been an important factor in the significant reduction in piracy activity in the Somali/Gulf of Aden/Horn of Africa region, and the agreement of EU member states to continue the operation is welcomed by the Group.

[Read more](#)

REGIONAL NEWS

Australia - Limited Recognition of Foreign Maritime liens in Australia (Steamship)

The 'Sam Hawk' decision makes clear that in limited circumstances an Australia court will recognise a foreign maritime lien as a basis for its jurisdiction under s 15. However such a lien will have to display the characteristics of a maritime lien under Australian law (including inalienability and a privileged priorities position) and arise in circumstances recognised as giving rise to a maritime lien by Australian law, described above. In effect, then, Full Court has all-but-closed the door that appeared to have been opened by this case at first instance.

[Read more](#)

Brazil and Uruguay - Soybeans with high moisture content (Skuld)

The Association has recently experienced a number of high value cargo claims in respect of soybeans loaded in South America, mainly Brazil, Uruguay and Argentina, all of which were discharged in China.

[Read more](#)



Canada - British Columbia's Crude Oil Tanker Ban (North of England)

The Government of Canada is set to introduce legislation by spring 2017 that will formalise a ban on large crude oil tankers or those carrying persistent oils as cargo, from entering or leaving ports and marine installations in British Columbia's (B.C.'s) Northern coastline area.

[Read more](#)

China - Newly released judicial interpretation on rules relating to vessel arrests in China (Standard)

As a judicial interpretation to relevant laws in China, the Rules provide details and new guidelines for the courts in China to follow when dealing with property preservation applications. Given that vessel arrests in China are initiated by claimants through filing property preservation applications, the following are the major points for vessel operators to be aware of:

[Read more](#)

China - thefts in Tianjin Port (Britannia)

Local correspondents have warned of a number of thefts from ships in the Tianjin anchorage area, about 20 nm from the port entrance.

[Read more](#)

China - Follow-up implementation of Emission Control Areas in China (Standard)

Attention must now be drawn to the fact that starting from the upcoming 1 January 2017, all key ports (e.g. Tianjin, Qinhuangdao, Tangshan, Huanghua, Shenzhen, Guangzhou, Zhuhai, Shanghai, Ningbo-Zhoushan, Suzhou and Nantong) within the three ECAs will require ships at berth to use fuel with less than 0.5% sulphur content.

[Read more](#)

India - Testing of Iron Ore Fines for Transportable Moisture Limit (West of England)

As advised in the Club's recent news article SOLAS – Amendments to the IMSBC Code (Amendment 03-15) - Reminder, a new schedule for Iron Ore Fines, and a new test procedure for determining Transportable Moisture Limit (TML), the modified Proctor / Fagerberg test procedure for iron ore fines, will be mandated from 1st January 2017.

[Read more](#)

Korea - Zika virus quarantine measures lifted at Korean ports (Swedish Club)

The National Quarantine Station in Korea recently announced that for vessels entering Korea after having called at a Zika virus affected country are no longer required for disinfection onboard and no longer required to submit a Self-Disinfection Certificate and changed to normal quarantine procedures.

[Read more](#)

Latin America - Latin American Bulletin, December 2016 (Standard)

This bulletin is dedicated to regional integration and cooperation in Latin America. Each of the articles focuses on a different inter-governmental organization and evaluates its impact on shipowners.

[Read more](#)

Mexico - Incident reporting in the Mexican oil and gas sector (Gard)

Two new legal instruments dealing with the reporting and monitoring of casualties and environmental incidents in the oil and gas sector have been published as part of the ongoing Mexican energy reform.

[Read more](#)

Philippines - Piracy in Asia - crew abductions (Gard)

The piracy reporting center ReCAAP ISC continues to warn about the many crew abductions currently taking place in the Sulu-Celebes Sea area - between Sabah, Malaysia and the Southern Philippines.

[Read more](#)



Singapore - Mass flow metering for bunkering (Skuld)

As a top bunkering port, Singapore will, from 1 January 2017, implement the mandatory use of the Mass Flow Metering (MFM) system which involve devices installed on all bunker vessels licensed by the Maritime and Port Authority of Singapore (MPA) to deliver Marine Fuel Oil (MFO) to vessels bunkering within the Singapore port waters.

[Read more](#)

South Africa - Stowaway prevention advice for South African ports (Standard)

It comes as no surprise to experienced ship owners that South Africa presents the possibility of stowaways and the disruption that this event can cause. For some time now South Africa has experienced regular stowaway activity at its major ports. P&I Associates (PTY) Ltd, based in Durban, has issued guidance on the unique challenges posed by the South African Authorities rules on Stowaways

[Read more](#)

UK - Increased limits of liability for shipowners in the UK (Standard)

This will increase shipowners (and salvors) exposure in respect of major maritime claims which are settled or determined according to English law. Please note these new limits will not apply retrospectively to incidents which occurred after 8 June 2015 but prior to 30 November 2016.

[Read more](#)

USA - Record Penalty for US MARPOL Violation (North of England)

The US Department of Justice (DoJ) reports that Princess Cruise Lines have agreed to pay USD\$40 million as a plea agreement and will plead guilty in respect of a number of US MARPOL violations. This is the largest ever criminal penalty involving deliberate vessel pollution.

[Read more](#)

USA - California's at-berth emission requirements toughens (Gard)

Certain types of vessels must reduce emissions of diesel particulate matter and oxides of nitrogen from auxiliary engines by 70 per cent whilst berthed at a California port from 1 January 2017.

[Read more](#)

USA - Ballast Water Treatment - USCG Approves Systems (North of England)

[Read more](#)