

RISK WATCH

TRW

JUNE 2018

MEET THE TEAM OUR NEW EXCLUSIVE CORRESPONDENT IN TAIWAN

CASE STUDIES ANALYSIS OF AN INTERESTING COLLISION CASE

LOSS PREVENTION SAFETY ISSUES INVOLVED WHEN WORKING ALOFT

LEGAL ANALYSIS ARTICLES ON LIQUEFACTION AND VOYAGE CHARTERING



BRITANNIA P&I
TRUSTED SINCE 1855

A MESSAGE FROM THE EDITOR

BRITANNIA'S MISSION IS TO BE **THE FINEST P&I CLUB IN THE WORLD.**



In this edition we are very pleased to introduce our new exclusive correspondent office in Taiwan, B Taiwan Correspondent Co. Ltd, which opened its doors on 20 February 2018. Ms Euly Luo, the head of the office, introduces us to her colleagues in the 'Meet the Team' section.

Elsewhere in the magazine, the loss prevention department looks at recent cases handled by the Club, highlighting some common themes – focussing on working aloft and routine tasks. We also analyse a collision case, comment on ITOPF's pollution round up, provide advice on liquefaction and warn about GPS interference in the Black and Eastern Mediterranean Seas. Additionally, there is a legal analysis on arriving timely at the first loadport.

The Members' Representative Committee and Board met recently in Tokyo and announced some exciting news. A further capital distribution of USD20m will be made to all P&I mutual Members with ships on risk at midnight on 15 May 2018. This is as a result of an aggregate post tax surplus of USD80.6m. Further details are available in the Club's Annual Report and Financial Statements which was published earlier this month.

Britannia is increasing its international representation with a new office opening shortly in Greece as well as strengthening the existing offices in Hong Kong and Japan. Additionally, the creation of a new exclusive correspondent was announced for Denmark. We look forward to introducing all of them in future editions.

The loss prevention team continue to provide their practical seminars for seafarers and DPAs in various worldwide locations.

Finally, the Britannia P&I Training Week takes place once again in our London office and is held on 3-7 September. Members are invited to send representatives to attend the course which includes a week of lectures and a social programme, providing an excellent opportunity to meet the claims teams based in London.

Full details and registration for our seminars and Training Week can be found on our website: britanniapandi.com/company-profile/club-diary/


CLAIRE MYATT
 Editor



A MESSAGE FROM OUR EDITOR We hope you've enjoyed this copy of the new Risk Watch. We will be looking for ways to maintain and increase the usefulness, relevance and general interest of the articles. If you have any ideas or comments please send them to: publications@triley.co.uk

MEET THE B TAIWAN TEAM

BRITANNIA'S NEW EXCLUSIVE CORRESPONDENT IN TAIWAN IS B TAIWAN P&I CORRESPONDENT CO., LTD. THE OFFICE IS STAFFED BY AN ENTHUSIASTIC TEAM WHO HAVE BEEN CLOSELY ASSOCIATED WITH BRITANNIA FOR MANY YEARS. THEIR COLLECTIVE EXPERIENCE IN P&I CLAIMS IS UNLIKELY TO BE FOUND ELSEWHERE IN TAIWAN. THE TEAM PRIMARILY ASSISTS BRITANNIA'S TAIWANESE MEMBERS. IT ALSO ASSISTS ANY OF BRITANNIA'S MEMBERS IF THEY HAVE A PROBLEM IN TAIWAN.



EULY LUO is B Taiwan's **Managing Director** and has thirty years of experience as a correspondent working with Britannia's Members. A graduate in law from the National Taiwan University, over the years Euly has handled the full range of claims arising in Taiwanese waters. Euly regularly explains and educates on P&I issues by giving talks and presentations. She has a wide network of contacts in government departments who often consult informally with her. Recent proposals for new pollution legislation in Taiwan has seen Euly involved in lobbying on behalf on the International Group of P&I Clubs.



RUTH CHEN is **Vice President of B Taiwan** and completed her Master's degree in Law in the USA. She then started work as a correspondent in 2004 and since then has been handling cargo, property and crew claims. Applying this wide scope of P&I knowledge and her organising skills, Ruth is instrumental in promoting and arranging Britannia's various conferences and presentations in Taiwan including Asian Forums, Claims and Loss Prevention Seminars, as well as ensuring that the more relaxed events such as the Britannia Golf Cup are enjoyable for all.



BRADY HUANG is a **Claims Manager** and graduated in 2007 from Cardiff University with a Master's degree in shipping. As well as having seven years' experience in P&I, Brady has worked for a major Motor Company, responsible for shipping and logistics management. Brady has handled various types of claims such as cargo, crew and property damage cases.



AVEN YU is the **Office Administration Assistant**. She has worked in correspondency since 1995 and assists with the office's daily running with general administrative activities including clerical support. Her voice is well known to Members in Taiwan as she is usually the first person to answer a Member's telephone call. Aven also acts as Euly's personal assistant.



JASON HUANG is a new member of the B Taiwan team, joining on 1 June this year. He is very keen to learn about P&I insurance and the international shipping business in general. This is Jason's first job in the industry and he is looking forward to the new challenges ahead.



WELLNESS AT SEA APP

The Wellness at Sea app is sponsored by Britannia P&I and forms part of Sailors' Society's wider Wellness at Sea programme which includes an online and classroom-based coaching course. Crew are encouraged to download the app to help them to keep healthy at sea.

For more information visit: sailors-society.org



COLLISION CASE STUDY

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19.15.14

19.24.14

19.33.14

ALEXANDRA 1

EVER SMART

Q.G
No 1

R

Q.G

G

FL.R.Rs
No 2

R

FL.G.2s
No 2

G

S.Sh

FL(3)G
No 3

R

FL(3)G
No 3

G

fS

Nautical miles

0.000 0.300 0.600 0.900 1.200 1.500 1.800 2.100 2.400

THIS IS A SUMMARY OF A COLLISION BETWEEN A TANKER AND A CONTAINER SHIP. A MORE DETAILED ANALYSIS IS AVAILABLE BY FOLLOWING THE LINK AT THE END OF THE ARTICLE.

A collision between *EVER SMART* and *ALEXANDRA 1* on 11 February 2015 off Jebel Ali has been the subject of an investigation report by the UK Marine Accident Investigation Branch (MAIB) and a judgment of the English High Court. It should be remembered that the main purpose of the MAIB investigation is to identify all the failures which led to the collision for the benefit of all interested parties and not to apportion liability. The purpose of the High Court's judgment is to determine liability by apportioning blame between the two ships. These different approaches to fault and causation provide for an interesting comparison.

The laden tanker *ALEXANDRA 1* was asked by the Vessel Traffic Services Officer (VTSO) to proceed from the outer anchorage to the entrance of the buoyed channel and to enter the channel as soon as the container ship *EVER SMART* was clear. *ALEXANDRA 1*, having set off early, found itself very close to and, to some extent, straddling the entrance of the channel as *EVER SMART* was still proceeding down the channel. Meanwhile, the master of *EVER SMART*, while complying with the departing pilot's last instruction to maintain course, had drifted over to the port side of the channel. *ALEXANDRA 1* misheard VHF exchanges from VTSO, believing *EVER SMART* was being told by VTSO to pass astern of the tanker. In fact VTSO was talking to another ship. Based on this misunderstanding, *ALEXANDRA 1* was manoeuvred slowly forward. A collision subsequently occurred.

Although the collision took place outside the entrance to the channel, the Court concentrated on the conflict between Rules 9 (narrow channel rule) and 15 (crossing rule), holding that the greater share of liability should rest with *EVER SMART* for its failure to comply with Rule 9, namely to keep to the starboard side of the channel. This was despite the findings of the MAIB. They found that *ALEXANDER 1* failed to keep a proper aural lookout and subsequently based its actions on a misheard VHF conversation which led it to believe *EVER SMART* would pass astern, and this was pivotal to the collision.

For more information visit: ow.ly/AGEv30knWsm

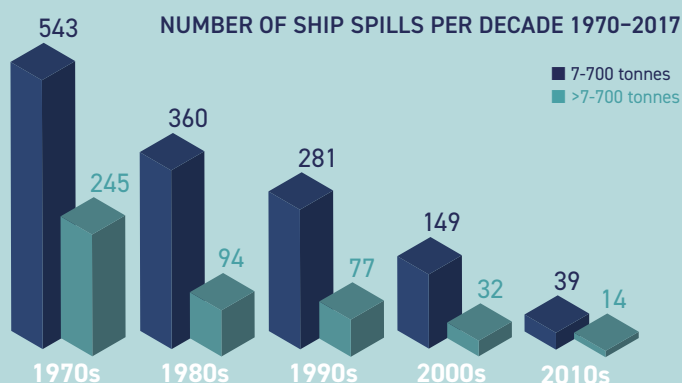


OIL POLLUTION ROUND UP

OIL POLLUTION IN NUMBERS

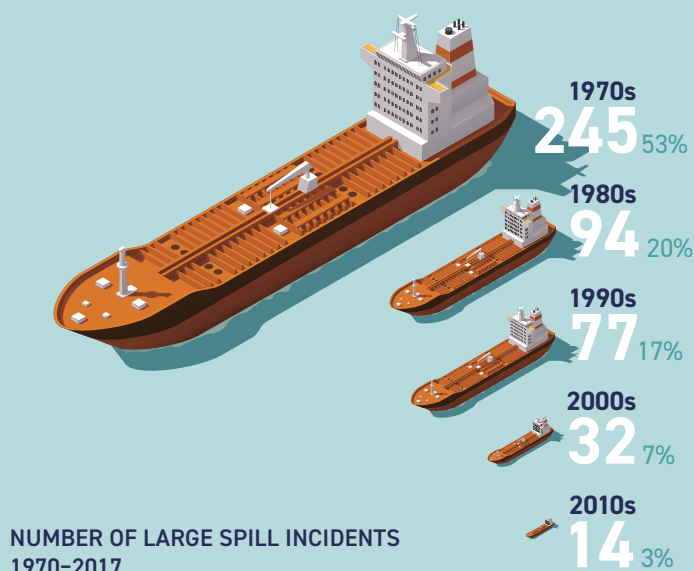
FOLLOWING ON FROM OUR *RISK WATCH* ARTICLE IN FEBRUARY 2018, WHICH HIGHLIGHTED THE WORK OF THE INTERNATIONAL TANKER OWNERS POLLUTION FEDERATION (ITOPF), WE SUMMARISE SOME OF THE KEY POLLUTION STATISTICS FROM 2017, WHICH HAVE RECENTLY BEEN PUBLISHED BY ITOPF.

ITOPF has published details of small spills (defined as less than 7 tonnes) medium sized spills (defined as 7-700 tonnes) and large spills (over 700 tonnes) for each year from 1970 to 2017. In order to identify global trends, an average figure has been calculated for each decade and is illustrated in the graph below.



In the 1970s there were on average 54.3 medium sized oil spills and 24.5 large oil spills per year. In the 1980s the average annual number of spills had fallen significantly to 36 medium sized spills and 9.4 large spills. This downward trend has continued in each decade since. From 2010, the average annual number of oil spills has fallen to an all-time low of 4.9 medium spills and 1.8 large spills. These reductions have been mirrored by the quantity of oil spilt at sea and comes despite the global growth in the quantity of oil carried by ships over the period.

These statistics are encouraging and demonstrate the huge improvements made by the shipping industry to reduce oil spills and harm to the marine environment.



THE IMPACT OF OIL POLLUTION ON THE MARINE ENVIRONMENT

Despite the fall in number of spills, large oil spills, such as the sinking of the oil tanker *SANCHI* in February 2018, has rightly focused attention on the impact that oil spills have on the marine environment.

Oil spills can represent a significant danger to marine organisms. Depending on the type of oil spilt, oil can smother organisms, affecting their ability to feed, breath or regulate temperature. Oil can be toxic if absorbed by organisms and it can disrupt a local ecosystem which can have an indirect impact on the wider marine population. Fortunately, the marine environment is resilient and over time an environment can recover naturally. There are several factors which can influence the impact of an oil spill and the time needed for the environment to recover, some of which are highlighted below.

THE TYPE AND QUANTITY OF OIL SPILT

Oil products carried by sea can have very different characteristics. A distinction is often drawn between persistent oils, such as crude oil, lubricating oil and heavy fuel oil and non-persistent oils such as light diesel, gasoline and kerosene. Persistent oils can smother organisms and oil beaches, whereas non-persistent oils will often evaporate and naturally dilute, but can be toxic to organisms at high concentrations. Understanding the type of oil and the quantity spilt can help predictions to be made as to which types of organisms may be vulnerable and to allow oil responders to focus on minimising the environmental impact.

THE LOCATION OF THE SPILL

Following a release of oil at sea, oil can form a surface slick which will often drift with the current and wind. Various modelling techniques are available to predict where an oil slick will spread, to allow sensitive areas to be protected and to direct oil recovery activities to maximise the quantity of oil which can be removed.

Oil spills often occur close to coastlines which can result in significant environmental damage and hinder the removal of oil. Oiled coastlines can take a great deal of effort to clean and some techniques used to remove all traces of oil can cause greater harm to the environment and delay the period needed for the environment to recover.

THE CLEAN-UP RESPONSE

There are various tools available to spill responders to remove oil and prevent damage to the environment. Often larger oil spills will use several methods at different locations, such as the use of booms, skimmers and sorbents. Unfortunately, it is rarely possible to physically remove all the oil spilt at sea, therefore the techniques used will often focus on minimising the damage. Many tools will only be effective in certain circumstances and at a particular time, therefore the speed of application can have a significant impact upon the final outcome.

For more information visit: ow.ly/wJSy30knWAE

LIQUEFACTION – ‘CAUTION’ REMAINS THE WATCHWORD

WE ARE GRATEFUL TO PHILIP STEMBRIDGE OF STEMBRIDGE SOLICITORS FOR THIS INTERESTING AND PRACTICAL ARTICLE ABOUT THE PROBLEM OF CARGO LIQUEFACTION.

A RECENT ARTICLE IN ‘TRADEWINDS’ SERVES AS A TIMELY REMINDER THAT INSTANCES OF CARGO LIQUEFACTION REMAIN LINKED TO THE HIGHEST NUMBER OF LIVES LOST AT SEA, CLAIMING MORE THAN 100 SEAFARERS’ LIVES DURING THE DECADE 2006-2016.

With shipments of iron ore and bauxite again on the increase, this article is intended to provide guidance on practical steps which should be taken when Members receive orders for loading IMSBC ‘Group A’ cargoes (cargoes which may liquefy if shipped with a moisture content (‘MC’) in excess of the transportable moisture limit (‘TML’)).

The MC is the portion of a representative sample consisting of water or other liquid expressed as a percentage of the total wet mass of that sample. The TML is taken as 90% of the MC that is necessary for liquefaction to be possible based on a laboratory test. The shift in the centre of gravity from the cargo liquefying, alternatively cargo sliding in the hold can cause a ship to capsize.

The problem is that cargoes such as nickel ore, iron ore, concentrates and bauxite (which can be prone to liquefaction if the moisture content is sufficiently high) are usually mined and stored in the open (and therefore exposed to the elements) in countries where, generally, the infrastructure is under-developed and frequent periods of high rainfall can be experienced.

The original voyage orders may not in fact provide a full description of the cargo. While the intended cargo should be named by using the Bulk Cargo Shipping Name (BCSN) as contained in the IMSBC Code, sometimes the shippers do not correctly name or identify the cargo to be loaded. For instance, a cargo described simply as ‘Iron Ore’ may turn out to be a concentrate. Alternatively, the Shipper’s Declaration / Cargo Information Sheet may state the cargo to be ‘Group C’ whereas the cargo should properly have been classified as ‘Group A’.

GUIDANCE:

1) When fixing, Members should seek to include the BIMCO charterparty clause for solid bulk cargoes which may liquefy (see page 5).

2) Obtaining the Shipper’s Declaration/Cargo Information Sheet is the starting point. This should contain a Certificate of the TML and a Certificate or Declaration of actual moisture content. The master should check the Certificate of TML to see:

i) **Who issued it?** The Certificate must have been issued by a recognised Competent Authority at the port of loading. The ‘Competent Authority’ is defined in the IMSBC Code as, ‘any national regulatory body or authority designated or otherwise recognized as such for any purpose in connection with the Code.’ It is for the Competent Authority to ‘assess the acceptability of the cargo for safe shipment’ and consider its classification (‘Group A’, ‘B’ or ‘C’ cargo). One inherent problem is that, globally, the competent authorities are not consistent. It is understood that the quality of laboratories testing TML can vary significantly as to accuracy.

ii) **When was it issued?** The interval between sampling/ testing and loading should never be more than seven days.

iii) **Whether the sample is referenced to the cargo/stockpile being loaded.** It is the sole responsibility of the shipper to ensure that the tested sample has the same characteristics and properties of the cargo that was sampled and tested for the TML. If there is no link, the master should be on his guard.

3) The IMSBC Code should be checked for requirements for the particular cargo.

4) The master should carry out a visual inspection of the cargo prior to and during loading and obtain photographic evidence where possible. This should include the cargo stockpiled ashore if possible.

5) If there is at any time an indication of high moisture content, the master should stop loading and take advice.

6) Weather conditions (eg monsoon season or heavy rain) should be monitored and logged.

7) ‘Can tests’ should be performed (as described in section 8 of the Code) and results photographed. However, such tests cannot replace laboratory tests and are not representative of the cargo being loaded. Some experts consider such tests to be highly inaccurate.

8) Ship’s trim and bilges should be monitored.

9) Any recommendations given for cargo care or handling during the voyage should be followed.

CAUTION:

The master should ensure that full cargo information has been provided and checked before loading operations commence. Where there is unreasonable delay in this information being provided or the master is being put under pressure to commence loading before receiving the cargo information or shippers refuse to co-operate in joint taking and testing of cargo samples, the master should be on extra alert as there may be some concerns as to the safety or accuracy of the cargo information.

The master has an overriding obligation not to load cargo which may adversely affect the safety of the ship (SOLAS Chapter XI-2 Regulation 8).

If the master has reasonable concerns about the cargo being loaded (for instance, by reason of its appearance, condition or concerns over potential to liquefy) it is unlikely any English Court or London Tribunal would criticise a decision to stop loading to take advice and possibly carry out further testing. The master would then need to be guided by expert advice in taking a decision whether it was then safe to continue loading.

BIMCO CHARTERPARTY CLAUSE FOR SOLID BULK CARGOES WHICH MAY LIQUEFY.

a) The Charterers shall ensure that all solid bulk cargoes to be carried under this Charter Party are presented for carriage and loaded always in compliance with applicable international regulations, including the International Maritime Solid Bulk Cargoes (IMSBC) Code 2009 (as may be amended from time to time and including any recommendations approved and agreed by the IMO).

b) If the cargo is a solid bulk cargo that may liquefy, the Charterers shall prior to the commencement of loading provide the ship's Master, or his representative, with all information and documentation in accordance with the IMSBC Code, including but not limited to a certificate of the Transportable Moisture Limit (TML), and a certificate or declaration of the moisture content, both signed by the shipper.

c) The Owners shall have the right to take samples of cargo prior to loading and, at Charterers' request, samples to be taken jointly, testing of such cargo samples shall be conducted jointly between Charterers and Owners by an independent laboratory that is to be nominated by Owners. Sampling and testing shall be at the Charterers' risk, cost, expense and time. The Master or Owners' representative shall at all times be permitted unrestricted and unimpeded access to cargo for sampling and testing purposes.

If the Master, in his sole discretion using reasonable judgement, considers there is a risk arising out of or in connection with the cargo (including but not limited to the risk of liquefaction) which could jeopardise the safety of the crew, the Vessel or the cargo on the voyage, he shall have the right to refuse to accept the cargo or, if already loaded, refuse to sail from the loading port or place. The Master shall have the right to require the Charterers to make safe the cargo prior to loading or, if already loaded, to offload the cargo and replace it with a cargo acceptable to the Master, all at the Charterers' risk, cost, expense and time. The exercise by the Master of the aforesaid rights shall not be a breach of this Charter Party.

d) Notwithstanding anything else contained in this Charter Party, all loss, damage, delay, expenses, costs and liabilities whatsoever arising out of or related to complying with, or resulting from failure to comply with, such regulations or with Charterers' obligations hereunder shall be for the Charterers' account. The Charterers shall indemnify the Owners against any and all claims whatsoever against the Owners arising out of the Owners complying with the Charterers' instructions to load the agreed cargo.

e) This Clause shall be without prejudice to the Charterers' obligations under this Charter Party to provide a safe cargo. In relation to loading, anything done or not done by the Master or the Owners in compliance with this Clause shall not amount to a waiver of any rights of the Owners.





WORKING ALOFT – DO IT SAFELY

FALLING FROM A HEIGHT, WHETHER IT IS ONTO THE DECK OR OVERBOARD, COULD CAUSE SERIOUS INJURIES AND CAN BE FATAL. IT IS IMPORTANT THAT MEMBERS HAVE ADEQUATE SAFETY MEASURES IN PLACE, SO THAT ALL ASSOCIATED RISKS CAN BE SUFFICIENTLY MITIGATED. FAILURE TO COMPLY WITH THESE CAN COMPROMISE THE SAFETY OF CREW AND PUT THEM IN SERIOUS DANGER.

In general, all work at heights should be carried out in fine weather and good lighting conditions. Before starting it is important that a correct 'permit to work' is issued, based on a thorough assessment of all associated risks. However, a good risk assessment on its own is not enough unless it is effectively communicated and understood by all involved. All work at heights should be supervised and all participants should be suitably briefed and trained to use the equipment required for each task.

The Club has handled three recent fatal accidents, all of which highlight safety breaches that are often seen on board when working aloft:

CASE ONE

An A/B working over the side in a bosun's chair drowned after the chair's rigging lines parted. The investigation showed that a risk assessment had been conducted; however, many of the risk reduction measures had not been implemented. The A/B was wearing a safety harness but his lifeline was not attached to the ship, nor was he wearing a suitable lifejacket.

ROOT CAUSES:

- Lack of supervision
- Risk assessments not properly implemented
- Improper securing of a lifeline
- Inadequate personal protective equipment (PPE)

CASE TWO

An A/B died after falling ten metres into an empty hold. The A/B was walking on the catwalk of a small container ship next to an open and empty hold. The catwalk was only 70 cm wide and not equipped with any railings or other fall arrest systems. The walkway was also obstructed by a number of lashing bars over which the A/B tripped and caused him to fall to his death.

ROOT CAUSES:

- Inattention by the A/B
- Supervisors and co-workers not appreciating the apparent danger
- Inadequate safety procedures in place to ensure safe access when walking on coamings and/or catwalks adjacent to open cargo holds and spaces

CASE THREE

An A/B died after a fall from a bosun's chair while painting the ship's funnel. The holding lines of the chair parted and also his safety belt broke as he fell. The fall was only from about three metres and at first the A/B showed few sign of injuries. However, due to internal injuries to his kidney, his condition later worsened and he subsequently died.

ROOT CAUSES:

- Failure to properly check the harness before use
- Using an incorrect type of harness; safety belts should only be used together with a harness, and not solely as a fall arrest device

WHAT YOU CAN DO TO REDUCE THE RISKS INVOLVED IN WORKING AT HEIGHTS

- **Clear procedures and good communication** – ensure that crew are familiar with the best practices and precautions to be taken.
- **Check equipment is appropriate** – ensure it is verified as fit for purpose and that the correct type of harness is used and is confirmed to be in good condition.
- **Correct storage and maintenance** – ensure that equipment is stored and maintained in accordance with the makers' instructions. Regular checks are essential, together with

awareness of what the effects of storage conditions can have on the equipment. For example, storage next to paint might weaken the strength of a harness.

- **Proper supervision** – ensure safety measures are sufficiently implemented and appropriately monitored.
- **Speedy response** – in the case of a fall, recover the injured person quickly and start suitable First Aid. This can help prevent suspension trauma, which can occur after 5-10 minutes when a human body is held motionless in a vertical position.

'ROUTINE' WORK DOES NOT MEAN 'NO RISKS' WORK

WHEN REVIEWING ACCIDENTS IN THE ENGINE ROOM, THE MOST COMMON ROOT CAUSE WE FIND IS THAT THE CREW HAS FAILED TO IDENTIFY AND REDUCE ALL RISKS INVOLVED WITH THE PARTICULAR TASK. WHEN ASKED WHY THE TASK WAS NOT DONE CORRECTLY, THE ANSWER IS OFTEN THE SAME – IT WAS REGARDED BY THE CREW AS A 'ROUTINE' JOB.

'Routine' is most commonly used to describe tasks carried out at frequent intervals and which usually do not take much time to complete. This can result in complacency towards any dangers that might be involved and the tasks are often wrongly regarded as risk free - a view which can have severe consequences.

A recent accident involved a 1st engineer who was lubricating an air conditioning fan. This was a job carried out weekly and which only took 5 minutes, in other words a typical routine job. As this had been done many times before by the 1st engineer, he had become complacent about the apparent risks associated with the lubricating point being located only 4 cm from the driving belt of the fan.

This complacency meant that the following mistakes were made:

- Shipboard procedure was not followed
- The fan was not stopped before the task
- Inappropriate large leather working gloves were worn

During the work the 1st engineer's right glove was caught by the rotating belt which led to his right little finger and part of his hand being amputated. He had to be airlifted to the nearest hospital and was later repatriated. This shows how a quick 'routine' job, where dangers were ignored, ended in a permanent disability for the engineer.

RESPECTING ALL JOBS EQUALLY, WHETHER THEY ARE ROUTINE OR NOT, AND ASSESSING THE RISKS INVOLVED ARE VITAL PARTS OF A HEALTHY SAFETY CULTURE ON BOARD. IT ONLY NEEDS A MINUTE TO ENSURE THAT HAVING ZERO ACCIDENTS REMAINS A PART OF THIS ROUTINE AS WELL.

WHAT SHOULD MEMBERS DO?

The ISM code 1.2.2.2 requires Members to: 'Assess all identified risks to its ships, personnel and the environment and establish appropriate safeguards'.

This means that Members will need to have procedures in place that deal with the assessment of risks for all kinds of work on board – particularly tasks regarded as routine. This does not mean that a lot of paper needs to be produced for every job. The procedures can (and indeed should) be kept simple, thereby reducing the stress on the crew and ensuring quality assessment instead of quantity of paperwork.

It is not necessary to produce a new risk assessment each time, it is perfectly acceptable to re-use an old one as long as the risk assessment is reviewed before the task is undertaken so all involved are fully aware of the potential risks. Any new risk identified should be carefully considered before the work is carried out.

Simplifying assessments can be achieved by:

- Toolbox talks discussing the daily work and associated risks
- Including the associated risks as part of the job description
- Making a generic checklist for routine jobs



VOYAGE CHARTERING – EXPECT THE UNEXPECTED

VOYAGE CHARTERPARTIES WILL INVARIABLY CONTAIN A CONTRACTUAL OBLIGATION REQUIRING THE SHIP TO PROCEED EXPEDITIOUSLY (QUICKLY AND EFFICIENTLY) TO THE FIRST PORT OF LOADING UNDER THE CHARTERPARTY.

The start of the approach voyage to the first port of loading is important because it is the date at which the chartered service begins and the voyage charterparty terms enter into full force and effect.

If there is an expected readiness to load date mentioned in the charterparty, the English courts have historically said that the shipowners are under an absolute obligation to start the approach voyage to the first loadport no later than the date by which it is reasonably certain that the ship can arrive near the expected readiness to load date.

This means that if the ship is unexpectedly delayed before starting the approach voyage the shipowners may find themselves thereby liable towards the voyage charterers for breach of charter. Furthermore, because at this time the voyage charterparty has not fully entered into force, the shipowners may not be able to rely on any contractual defences in the charterparty in order to escape liability.

In the recently reported case of *The 'Pacific Voyager'*, the High Court of London has re-affirmed this position and also decided that if there is no expected readiness to load date mentioned in the charterparty, then the cancellation date, or any date of expected progress and completion of the ship's ongoing employment, will be applied as the reference points for calculating the latest date by which the shipowners must start the approach voyage to the first loadport.

The facts of the case were that the shipowners had entered into a voyage charterparty on an amended Shellvoy 5 form on 5 January 2015 ('Charterparty') for a voyage from Rotterdam to the Far East, with a cancellation date of 4 February 2015. At the time of fixing, the ship was engaged in other employment and due to call at Egypt and proceed to Le Havre for final discharge. The current position of the ship and estimated arrival dates in Egypt and Le Havre were mentioned in the Charterparty.

Unfortunately for the shipowners, on 12 January 2015 the ship collided with an uncharted underwater obstacle in the Suez Canal and sustained serious damage and had to discharge her previous cargo in Egypt and then enter into dry dock for a prolonged period of repairs. The casualty was unforeseeable and fortuitous and was not the fault of the shipowners in any way. The shipowners promptly informed the subsequent charterers of the incident and kept them updated about the repair schedule. By the cancelling date of 4 February 2015 the ship was about to enter dry dock for repairs which would take some months.

On 6 February the subsequent charterers cancelled the Charterparty and brought a claim before the High Court in London for damages in excess of USD1.2m from the shipowners. The subsequent charterers argued that the shipowners should have started the approach voyage to the first loadport of Rotterdam by a date when it was reasonably certain that the ship could arrive by the cancelling date of 4 February.

The High Court found in favour of the subsequent charterers and held that there was an absolute duty on the shipowners to commence the approach voyage at a reasonable time, the identification of which was to be determined in light of the other charterparty terms, in particular ETAs. The shipowners had given intermediate port estimates which involved the ship arriving at Le Havre on 25 January for final discharge of the previous cargo.

The Court said that based on the ETA at Le Havre the shipowners should have started the short approach voyage to Rotterdam after allowing for a reasonable period of discharge at Le Havre. The Court went on to say that if the shipowners had given no ETAs, then the Charterparty cancelling date of 4 February should be used as the reference point to calculate the date by when the shipowners needed to start the approach voyage to arrive at Rotterdam by the cancelling date. In other words, missing a cancelling date may potentially expose shipowners to a claim by charterers if the approach voyage was started belatedly.



GPS INTERFERENCE IN THE BLACK AND EASTERN MEDITERRANEAN SEAS

THE US MARITIME ADMINISTRATION, OTHER MARITIME AUTHORITIES AND SEAFARERS HAVE ALL RECENTLY HIGHLIGHTED THE ISSUE OF POTENTIALLY DELIBERATE CORRUPTION OR INTERFERENCE OF GPS SIGNALS IN THE BLACK AND EASTERN MEDITERRANEAN SEAS.

This interference, due to jammed, lost or altered signals or GPS spoofing, can affect navigation and other communication equipment, resulting in inaccurate positions being displayed.

In most cases the disruption was discovered primarily due to the diligence of ship staff who were monitoring the ship's position and navigational passage effectively and were able to take both timely and positive action when the anomaly was discovered.

While GPS is usually the primary means of providing real time positions for both paper and electronic charts, it is essential that the GPS signal and accuracy is checked regularly. The traditional methods of navigation, including parallel indexing, the use of radar (overlays, ranges and bearings) as well as electronic and manual cross-checking by reference to shore-based AIS or similar aids to navigation is to be encouraged.

A number of ECDIS systems are available, equipped with Multi Global Navigation Satellite System (GNSS) receivers which are able to receive the signals broadcast from multiple global navigation satellite systems such as GPS, GLONASS, BeiDou and Galileo. Such systems reduce the likelihood of disruptions caused by blockages.

A GPS position should be treated as a single position line and ideally a three point fix (the cocked hat) should be used to determine a ship's position accurately in particular circumstances.

The Court also reaffirmed that contractual limitations and exceptions, such as dangers and accidents of the seas (see for example Exceptions clause 32 of the Shellvoy 5 form), do not apply to the progress of the ship whilst engaged in employment pursuant to a previous charter to which the subsequent charterers are not party. As a result, the shipowners were liable to the subsequent charterers even though the casualty in Egypt, which occurred during the previous charter, was not the fault of the shipowners.

In summary, this case is a reminder that the shipowners' duty to promptly start the approach voyage to the first loadport under a voyage charter is a stringent obligation under English law so that when fixing a voyage charter based on an upcoming expected readiness to load date, cancelling date, or any progress dates of an ongoing voyage, that shipowners should factor in sufficient allowance for foreseeable delays that the ship might encounter during any ongoing voyage at the time of fixing.

THE 'PACIFIC VOYAGER' [2018] 2 Lloyd's Law Reports 57.





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