

RISK WATCH

JUNE 2023

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BRITANNIA P&I
TRUSTED SINCE 1855

A MESSAGE FROM THE EDITOR



We continue our series introducing readers to our various departments and offices around the world. In this edition we showcase our Greek team as they celebrate five years since opening the Greek office.

The Greek office has significantly strengthened the level of service that we provide to our Members in the region and another important service development is the recent introduction of our Member Portal. For those who are less familiar with how the Portal works and what features and benefits are available, we provide a reminder on page six.

Cargo claims continue to account for a large percentage of all claims and our loss prevention team highlight a number of recent issues, including the flooding of cargo holds and the importance of maintaining cargo ventilation logs. We also feature our recent Loss Prevention Insight report on the handling and carriage of steel.

We conclude with our regular legal update, where our team of expert FD&D lawyers around the world highlight some important legal cases and set out why these decisions are important for our Members and their businesses.

As always, we appreciate your feedback so please feel free to contact the communications team with any comments.

A handwritten signature in white ink that reads "Claire Myatt". The signature is stylized and cursive.

CLAIRE MYATT
Editor



We hope you enjoy this copy of 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: britanniacommunications@tindalldriley.com

BRITANNIA IN GREECE

IN 2018, IN LIGHT OF THE GROWTH IN BRITANNIA'S GREEK TONNAGE, AND IN ORDER TO ENHANCE THE SERVICES OFFERED TO EXISTING AND POTENTIAL NEW GREEK MEMBERS, THE CLUB OPENED AN OFFICE IN PIRAEUS. SINCE THE OFFICE OPENED, WITH THE SUPPORT OF EXISTING AND NEW MEMBERS, THE CLUB HAS INCREASED ITS GREEK OWNED TONNAGE SIGNIFICANTLY, WHILE MAINTAINING THE LEVEL OF SERVICE EXPECTED BY THE MEMBERSHIP.

THE ABILITY TO ENGAGE WITH OUR MEMBERS AT A LOCAL LEVEL HAS BEEN AND REMAINS KEY TO THE SUCCESS OF THE BUSINESS.

Opening the Greek office was also part of a broader strategy aimed at devolving claims handling from London so as to provide a more localised service in a more convenient time zone for Members, which was timed to coincide with the development of hub offices in Japan, Singapore, Hong Kong, Denmark, and, more recently, the US. It was also seen as key to assisting growth in the Greek market, and the return to date, as already mentioned, has been positive.

We have been happy to receive honest and positive feedback from our members, who have been very supportive of our efforts to establish the office here. There is no doubt that one of the main factors for the growth of business in Greece has been the new office. Britannia's reach and appeal have been enhanced, and we are hopeful of further developing Britannia's Greek membership, not only organically but also in terms of new business on a conservative and selective basis, over the next 5 year cycle. The ability to engage with our members at a local level has been and remains key to the success of the business. The office in Greece allows Britannia to interact with our Greek members more easily and have a better understanding of their needs. This has been particularly valuable in the recent COVID-19 affected circumstances.



MEET OUR TEAM IN GREECE



The Greek team celebrate their fifth anniversary with Andrew Cutler, Mike Hall, Simon Williams and Helen Todd from the London office.

THE GREEK OFFICE IS NOW ALMOST FIVE YEARS OLD AND THE GREEK MEMBERSHIP HAS GROWN CONSIDERABLY TO BECOME ONE OF BRITANNIA'S BIGGEST AREAS OF TONNAGE. WHEN THE OFFICE OPENED IN 2018, BRITANNIA HAD 15M GT OF GREEK TONNAGE ON ITS BOOKS WHICH HAS NOW GROWN TO 26M GT, WHILE THE NUMBER OF GREEK MEMBERS HAS INCREASED FROM 27 TO 39 OVER THE SAME PERIOD OF TIME.

Secondments of London-based claims handling staff helped establish the Greek office from 2018 but these have now come to an end, so we have taken this opportunity to refresh and expand the claims team to service the increased tonnage, as well as to provide a base for further marketing the

BRITANNIA'S GREEK TONNAGE HAS NOW GROWN TO 26M GT

Club in the forthcoming years. To this effect, **Elina Souli** (Associate Director/ Deputy Head of Office), **Ioanna Exadaktylou** (Associate Director), **Sofia Syreloglou** (Fleet Manager) and **Danae Manta** (Fleet Manager) have all recently joined the Greek team previously consisting of **Konstantinos Samaritis** (Divisional Director/Head of Office), **Ruth Dresser** (Fleet Manager), **Mira Milouseva** (Fleet Manager) and **Penelope Foka** (Office Manager). To enhance further the office's presence, **Dale Hammond**, a director of Tindall Riley (Britannia) Ltd and Global Head of FD&D Claims, has recently re-located to Greece.



KONSTANTINOS SAMARITIS

KONSTANTINOS qualified as a Greek lawyer in 1999. He spent the first eight years of his career in private practice dealing with all areas of the law but with a particular focus on shipping and corporate matters. In 2007 he decided to move to an in-house role and has subsequently worked for shipowners and two other IG P&I Clubs before joining Britannia's newly established Greek office in 2018 as an Associate Director. In January 2020, he was made Head of Britannia's Greek office, and later in the year, he became a Divisional Director. He is also an Accredited Mediator certified by the Greek Ministry of Justice.



ELINA SOULI

ELINA is a lawyer qualified both in Greece and the UK and holds an LLM degree from Southampton University in UK. She started her career in 1998 as an Associate lawyer in a shipping law firm in Greece and since 1999 she had been working in two different IG P&I Clubs before joining Britannia's Greek office in 2022 as Deputy Head of office and Associate Director. Elina is regularly invited to speak at various International Conferences related to P&I and Marine Insurance topics and she is a visiting lecturer at the LLM course of Athens Law School.



DANAE MANTA

DANAE spent 11 years in the Greek office of another IG P&I Club, handling all types of P&I and FD&D cases, before joining Britannia in 2022 as a Fleet Manager. She qualified as a Greek lawyer in 2012 and holds an LLM in Maritime Law from the University of Southampton and an MBA in Shipping from Alba Graduate Business School.

IOANNA
EXADAKTYLOU

IOANNA studied Law and Politics, before gaining a Masters in Maritime Law in the UK. She started her shipping career in 2006 working for a Greek shipowner. In 2008 she joined the London office of another IG P&I Club and in 2015 she moved to their Greek office. In 2022, after 14 years of handling claims for another IG Club, she joined Britannia's Greek office as an Associate Director. Ioanna is a Member of the Institute of Chartered Shipbrokers.



MIRA MILOUSEVA

MIRA is a qualified Greek lawyer and a solicitor of England and Wales. She is a holder of both the P&IQ Certificate and P&IQ Advanced Certificate. Before joining Britannia as a Fleet Manager, Mira worked for eight years in another IG P&I Club and for 6 years in an international law firm in Greece dealing with contentious shipping matters. Mira has also worked for a year in an international trading company and for three years in a Greek law firm. Mira is trilingual in English, Greek and Bulgarian.



RUTH DRESSER

RUTH studied law at the University of Glasgow and qualified as a solicitor in 2011. She moved to Greece in 2014, where she worked as a P&I correspondent for a year before joining another IG P&I Club in 2016. Ruth moved to Britannia in 2020, where she handles a full range of P&I and FDD matters. Ruth was promoted to the role of Fleet Manager in April 2023.



SOFIA SYRELOGLOU

SOFIA is a Greek lawyer with a Masters in Maritime law from Southampton University. She joined the London office of an IG P&I Club in 2017 dealing with P&I and FDD disputes for the Greek membership of the Club. She relocated to Athens to work in-house for a shipowner before joining Britannia's Greek Office in September 2022.

PENNY gained a degree in financial planning in South Africa before moving to Greece in 2009. She joined a shipping law firm working as a Personal Assistant to the Managing Partner for 8 years. In 2018, she joined Britannia as an Office Manager and assisted with the establishment of the Greek office.



PENNY FOKA



FLOODING OF CARGO HOLDS



Charles Cooper
Loss Prevention Manager, London
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THE CLUB HAS SEEN AN INCREASE IN THE NUMBER OF INCIDENTS RELATING TO WATER INGRESS INTO HOLDS, THE CONSEQUENCES OF WHICH CAN PROVE COSTLY AND CAUSE DELAYS TO VESSELS' SCHEDULES. THERE ARE A NUMBER OF WAYS IN WHICH WATER CAN ENTER THE CARGO HOLD OF A VESSEL. THIS ARTICLE WILL FOCUS ON WATER INGRESS FROM CARGO AND BILGE LINES, AS WELL AS BALLAST TANKS. FOR INFORMATION ON WATER INGRESS THROUGH HATCH COVERS, PLEASE SEE THE CLUB'S EXISTING GUIDANCE ON THIS TOPIC.



Cargo hold bilge systems are fitted with a non-return valve on each bilge line, normally within the bilge well above the strum box/strainer. Non-return valves can seize open or partially open; a lack of an audible clanking of the non-return valve in operation should be investigated. If the screw down valve between the bilge line and the bilge pumping system/eductor is not closed and bilge/general service/ballast pumps are subsequently operated, sea water may flood back along the bilge line, past the non-return valve and into the cargo hold.

It is recommended that the inspection, maintenance and testing of cargo hold bilge line non-return valves are incorporated into the vessel's planned maintenance system, including lubrication of the non-return valve flap bearings, and checks for backflow past the nonreturn valves when bilges have been pumped dry, and with cargo holds empty. Non-return valves and bilge line isolation screw down valves should also be opened periodically and inspected for obstructions and the build-up of cargo residues to ensure that they remain effective.

Non-return valve blockages can be caused by debris, cargo residues and rust entering the bilge line and affecting the operation of the non-return valve, a strainer/strum box should be fitted to the end of the bilge suction pipe.

When carrying dry bulk cargo, suitable protective measures should be taken to prevent cargo migrating past the bilge well plate into the bilge well, such as fitting hessian and taping this in place. When cleaning holds after the discharge of dry bulk cargo, bilge well plates should be removed and all traces of cargo residue and debris cleared from the bilge well.

Pipework failure can occur where bilge suction lines pass through ballast tanks, the pipework should be checked for excessive corrosion during routine ballast tank internal inspections.

Crew members engaged in pumping cargo hold bilges should ensure that all valves isolating the bilge lines from bilge/general service/ballast pumps and eductors are closed upon completion of pumping bilges. Consideration may be given to posting warning notices next to bilge line isolation valves reminding crewmembers that they should be shut once the pumping of bilges has been completed.

Damage to hold structure may be caused by cargo operations, for example, due to grab damage to tank top plating or hold pipework on vessels carrying dry bulk cargo. Similarly, container vessel tank tops may be damaged by containers which are landed heavily or if lashing material becomes trapped between tank top and the container base.

Periodic hydrostatic testing of ballast tanks surrounding cargo holds should also be considered as part of a vessel's planned maintenance system, conducted at suitable intervals when the holds are cargo free. The test should only be conducted when shipboard operations and local regulations allow and when the cargo holds in question are empty. The ballast tank is overflowed to deck and the cargo holds adjacent to the tank inspected for leaks. However, such a practice only confirms that the tank is not leaking at the time of the test. It is therefore recommended that, as far as is safe and practicable, ballasting operations are only undertaken when the adjacent cargo holds are empty of cargo, recognising that this may not always be possible due to operational reasons.

In addition, if a sounding or remote monitoring of a ballast tank reveals an unexpected reduction or increase in the tank's contents, a thorough investigation should be carried out to ascertain the cause of the change.

Severe corrosion of ballast tank steelwork may involve plating where localised corrosion is so severe that holes have appeared, or on ballast tank air and sounding pipes in holds



SUMMARY OF CAUSES OF WATER INGRESS INTO CARGO HOLDS AND PREVENTATIVE MEASURES

CAUSE OF WATER INGRESS

PREVENTATIVE MEASURES



Seizure of non-return valves

- Inspection, maintenance, testing and lubrication of cargo hold bilge line non-return valves.
- Checks for backflow past the non-return valves when bilges have been pumped dry (holds to be empty).
- Periodic opening and inspection of non-return valves and bilge line isolation screw down valves.



Non-return valve blockage

- Preventing cargo migrating past the bilge well plate into the bilge well, by fitting hessian or similar above the plate, and a strainer/strum box to the suction pipe in the bilge well.
- Removing bilge well plates and cleaning cargo residue and debris after each discharge.



Pipework failure

- Checking pipework for excessive corrosion during routine ballast tank internal inspections.



Operator error

- Ensure that all valves isolating the bilge lines from bilge/general service/ballast pumps and eductors are closed after pumping bilges.
- Posting warning notices next to bilge line isolation valves.



Damage to hold structure

- Performing effective cargo watches.



Severe corrosion of ballast tank structure

- Periodic hydrostatic testing of ballast tanks with cargo holds empty.
- When practicable, only conducting ballasting operations when the adjacent cargo holds are empty of cargo.
- Investigating any unexpected reductions or increases in tank contents.



Leaking ballast tank manhole covers

- Carry out maintenance on the manhole cover while in dry-dock, or when the tank is opened.
- Refitting the cover carefully on completion so that the tank is ready for use.
- Checking that sealing arrangements are free of debris.
- Gaskets to be in satisfactory condition and renewed as necessary.
- All nuts and bolts in place and correctly cross-tightened.
- Hydrostatic testing of manhole covers when cargo holds are empty.

where the blind side of pipework close to the adjacent steelwork has corroded unchecked due to the difficulty of examining this area and removing rust scale. Where inspection of the pipework within a hold is problematic this should be conducted during each dry docking period.

Leaking ballast tank manhole covers may be due to failure of the gaskets or the presence of debris preventing a suitable seal when manhole covers are refitted, or when manhole cover securing nuts and bolts have not all been replaced or properly tightened.

If a ballast tank manhole within a cargo hold has been opened for a routine inspection, to carry out maintenance or while in dry-dock, the manhole cover should be refitted carefully on completion so that the tank is ready for use. Checks should be made to ensure that sealing arrangements are free of debris, that the gasket is in satisfactory condition and renewed if necessary, and that all nuts and bolts are in place and correctly cross-tightened in order to achieve a watertight seal. Provided no cargo is present in the hold, it is recommended that the tank is then checked by means of hydrostatic testing at the earliest opportunity to confirm that the manhole cover does not leak.

Bilge high level alarms and hold water level detectors will provide an early warning, and if acted upon quickly can prevent water ingress into the cargo hold. If these alarms are fitted, they should be tested periodically to confirm that they will operate correctly if water accumulates in the bilge well/cargo hold. Regardless of such alarms, bilge well soundings should be taken and recorded twice daily as a matter of routine as there have been many cases of water building up in a hold undetected due to the sudden and unexpected failure of a bilge high level alarm. Any activation of a bilge high level alarm or water level detector, or build-up of water in a bilge well should be investigated immediately.

BRITANNIA LOSS PREVENTION INSIGHT HANDLING AND CARRIAGE OF STEEL

AN OVERVIEW FOR THE MARITIME SECTOR

5

BRITANNIA LOSS PREVENTION INSIGHT

ISSUE NUMBER 5 / JANUARY 2023

**HANDLING AND CARRIAGE OF STEEL
AN OVERVIEW FOR THE MARITIME SECTOR**

ABOUT OUR PARTNER

CWA INTERNATIONAL

THE CWA METALS & MINERALS DEPARTMENT

The CWA Metals & Minerals Department provides expert advice on a comprehensive range of metals and minerals, storage and marine transportation, especially related to the shipment of these commodities as bulk, break-bulk, bagged, drummed and containerised cargoes. The department comprises a team of specialists with extensive expertise in all industrial minerals, ferrous and non-ferrous metals.

CWA Metals & Minerals Department can also provide expert advice on ore mining and processing, metals smelting, refining and manufacture, minerals processing and refining. The department has an established track record of investigations into casualties, advice on quantum and mitigation as well as loss prevention, risk management, safety and environmental studies.

INTRODUCTION

THIS LOSS PREVENTION INSIGHT REPORT EXAMINES THE DIFFERENT TYPES OF STEEL (PRODUCTS) CARGOES, THE CAUSES OF DAMAGE TYPICALLY SUSTAINED AND PREVENTIVE MEASURES THAT SHOULD BE CONSIDERED IN ORDER TO HAVE A CLAIMS FREE OUTFURN AT THE DISCHARGE PORTS.

Steel is one of the most commonly used materials in the world, with large volumes being shipped annually. Steel products have high values and are easily damaged.

COMMON STEEL PRODUCTS SHIPPED BY SEA

STEEL PRODUCTS ARE GROUPED INTO ONE OF THREE CATEGORIES: FINISHED, SEMI-FINISHED AND CRUDE STEEL PRODUCTS.

FINISHED STEEL PRODUCTS are typically higher value, more easily damaged and in final form either ready for use or for processing into the end product. They are often wrapped or have a protective covering. The most valuable product in terms of potential claims is Cold Rolled Coils (CRC) which are usually covered in water resistant paper and a light metal envelope to afford additional protection.

SEMI-FINISHED STEEL PRODUCTS include blooms, billets and slabs. These are more robust steel products and will be further processed (usually re-rolled) at the final destination.

CRUDE STEEL PRODUCTS include unfinished ingots, pig iron and scrap. These will be subject to further extensive re-processing and may even be re-melted. They are of lower value and less susceptible to damage claims.

Within these three broad categories there are numerous grades, shapes and forms of steel with a wide range of risks and potential for damage. A brief description of the main types of steel are summarised in Appendix 1 on page 12.

IN JANUARY 2023 THE LOSS PREVENTION DEPARTMENT PUBLISHED ITS LATEST INSIGHT WHICH LOOKED AT THE CARRIAGE OF STEEL PRODUCTS. THE INSIGHT WAS PRODUCED IN CONJUNCTION WITH CWA METALS AND MINERALS DEPARTMENT WHICH PROVIDES EXPERT ADVICE ON A RANGE OF METALS AND MINERALS, PARTICULARLY RELATED TO THE SHIPMENT OF THESE COMMODITIES IN BULK.

Steel is one of the most commonly used materials in the world, with large volumes being shipped globally each year. These steel products have high values and can easily be damaged. In this Insight, we look at the different types of steel cargoes, examine the causes of damage often sustained and set out the preventative measures that should be considered in order to have a claims-free outturn at the discharge port.

The Insight is available on the Britannia website and can be downloaded here: <https://bit.ly/britLP5>

BRITANNIA MEMBER PORTAL

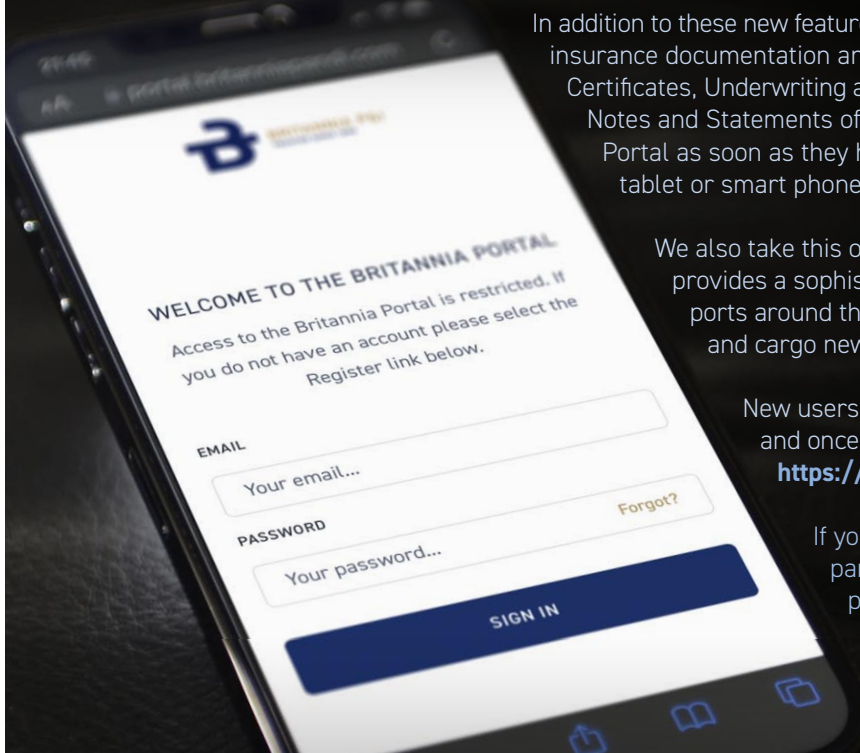
WE REMIND MEMBERS THAT THEY CAN NOW DOWNLOAD THEIR MEMBER RECORD AND CLAIMS LIST FROM THE BRITANNIA MEMBER PORTAL. BOTH THE MEMBER RECORD AND THE CLAIMS LIST ARE UPDATED AT CLOSE OF BUSINESS EACH DAY AND COPIES CAN BE DOWNLOADED ON DEMAND AT ANY TIME.

In addition to these new features, Portal users can still search for and download insurance documentation and certification, including Certificates of Entry, Trading Certificates, Underwriting and Claim Credit/Debit Notes, Capital Distribution Credit Notes and Statements of Account. These documents become available on the Portal as soon as they have been issued and can also be accessed via a tablet or smart phone.

We also take this opportunity to highlight the PortIntel function, which provides a sophisticated map-orientated database of information on ports around the world, including the latest sanctions, security, and cargo news.

New users can register for the Britannia Member Portal and once registered, can access the Portal here: <https://portal.britanniapandi.com> or via the Britannia website.

If you have any comments on the Portal or if there are particular features you would like to see in the future please email bmp@tindallriley.com. We would appreciate hearing from you.



PIRACY AND ROBBERY IN THE SINGAPORE STRAIT



Capt. Simon Rapley
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THE CLUB HAS BEEN ALERTED TO AN INCREASE IN THE NUMBER OF INCIDENTS OF PIRACY AND ROBBERY IN THE SINGAPORE STRAIT. MOST OF THE INCIDENTS INVOLVED PETTY THEFT AND LUCKILY NO VIOLENCE WAS INVOLVED. THE SHIPS THAT WERE TARGETED WERE MOSTLY OVER 50,000 DWT, WITH BOTH LOW AND HIGH FREEBOARDS, AND WERE PROCEEDING AT SLOW SPEED. MOST INCIDENTS TOOK PLACE DURING THE HOURS OF DARKNESS.

In 2022 the International Maritime Bureau (IMB) reported that they received 115 reports of piracy and robbery worldwide. 38 of these attacks took place in the Singapore Strait, and so this amounts to 33% of all reported attacks. In 2018 only three boardings were reported in the area, and this number increased to 35 in 2021. So far in 2023 there have been four boardings reported. However, it is likely that the actual figures are higher as sometimes boardings go unreported. In three cases guns were seen and in 18 cases knives were reported. The Information Fusion

Centre, a regional Maritime Security (MARSEC) centre hosted by the Singapore Navy, reported 55 incidents in their reporting area for 2022.

**33% OF ALL REPORTED
ATTACKS TOOK PLACE IN
THE SINGAPORE STRAIT**

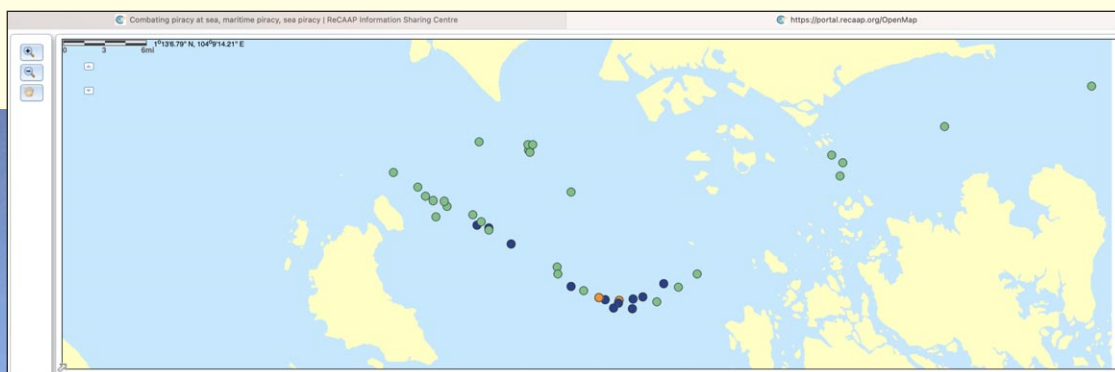
According to the Piracy and Armed Robbery against Ships in Asia (ReCAAP) Interactive Incident Reports Map, incidents can be expected to be encountered almost along the entire length of the Singapore Strait.

Due to the ongoing risk, the guidance in the following two documents should be considered and implemented where practicable well in advance of arrival in the area:

- **Best Management Practices 5**
- **Global Counter Piracy Guidance for Companies, Masters and Seafarers**

Members and their masters are urged to report all attempted or actual boardings to the IMB Piracy Report Centre. Britannia is proud to be a voluntary sponsor of the excellent work undertaken by the IMB Piracy Reporting Centre.

Any Members requiring further assistance or guidance on this topic can contact the Loss Prevention department.



THE CLUB FREQUENTLY ENCOUNTERS CASES WHERE THERE IS APPARENT MOISTURE DAMAGE TO CARGO. THIS DAMAGE MAY BE TO AGRICULTURAL PRODUCTS, OR RUST DAMAGE TO STEEL, FOR EXAMPLE, DUE TO THE FORMATION OF SHIP OR CARGO SWEAT. THE CLUB CAN HAVE DIFFICULTY DEFENDING THESE CLAIMS IF THE VENTILATION LOGS ARE NOT PROPERLY COMPLETED.

CARGO VENTILATION LOGS



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THE CARGO VENTILATION LOG IS AN IMPORTANT DOCUMENT AND PROVIDES EVIDENCE THAT THE CARGO HAS BEEN PROPERLY CARED FOR WHILST BEING CARRIED IN THE VESSEL. THE LOG WILL CONTAIN REGULAR AND ACCURATE MEASUREMENTS WHICH WILL SHOW THAT ALL THE PROPER VENTILATION MEASURES ARE BEING TAKEN. THESE MEASURES WILL COMPLY WITH THE RELEVANT RULES AND ARE ALWAYS SUBJECT TO THE FUMIGATION CIRCUMSTANCES AND THE WEATHER CONDITIONS. IT IS VERY IMPORTANT TO COMPLETE THE VENTILATION LOGS CORRECTLY AS THEY ARE OF VITAL IMPORTANCE IF A CLAIM FOR MOISTURE DAMAGE IS TO BE DEFENDED SUCCESSFULLY. IF THE RECORD KEEPING HAS NOT BEEN PROPERLY DONE, IT IS VERY DIFFICULT FOR THE CLUB TO PROTECT THE MEMBER'S POSITION IF THERE ARE CLAIMS FOR MOISTURE DAMAGE.

WHY VENTILATE?

Ventilation will reduce the incidence of ship's sweat and will avoid cargo sweat, which can lead to cargo damage claims on both hygroscopic (substances which tend to absorb moisture from the air) and non-hygroscopic cargoes.



WHEN TO VENTILATE?

Two rules can be followed when determining whether to ventilate or not:

DEW POINT RULE: A cargo hold should only be ventilated when the dew point of the outside ambient air is lower than the dew point of the air inside the headspace of the hold.

ADVANTAGES

- Accurate if done well.
- Requires less organisation at the load port.

DISADVANTAGES

- Requires access to the hold headspace to obtain accurate dry/wet bulb temperatures, which during a voyage is rarely safe/feasible.
- Wet bulb temperature needs to be measured using a whirling or aspirated hygrometer to be accurate. Some vessels may not have this equipment.
- Requires regular measurements and calculations which are sometimes performed incorrectly.

THREE DEGREE RULE: A cargo hold should only be ventilated when the outside ambient dry bulb temperature is at least 3°C lower than the mean cargo temperature at loading.

ADVANTAGES

- Easier to perform in practice than the dew point rule during the voyage.
- Access to the cargo holds is not required.
- Safer for crew working on deck, particularly at night, as measurements from the hold are not required.
- Complex calculations are not required.

DISADVANTAGES

- A surveyor may need to be appointed at the load port to obtain the cargo temperature for each cargo stow during loading.



In addition to these rules, a charterparty may also include general instructions on ventilation. Any ventilation instructions must be followed at all times. Where the instructions from the charterers are “ventilate whenever possible”, this does not mean ventilate at all times, but only when the temperature or dew-point data indicate that it is appropriate and also when the weather conditions are suitable. Any stipulated period for fumigation should be followed and ventilation, as necessary, started after the fumigation period.

KEEPING VENTILATION LOGS

If there is a cargo claim for moisture damage alleged to be due to the formation of sweat during the voyage, ventilation logs showing that the cargo hold was ventilated correctly and properly cared for may be very important in defending any such claims.

Depending on which ventilation rule is followed, the following should be recorded:

- cargo temperature at loading
- dew point for outside air at least once per watch, along with dry and wet bulb temperatures
- dew point for air in each cargo hold at least once per watch, along with dry and wet bulb temperatures
- whether ventilation is needed
- seawater temperature
- time for starting and suspending ventilation in each hold, including reasons for suspension. If this is due to the weather, then keep exact details of the weather conditions.

If the Dew Point Rule has been followed, wet and dry bulb temperatures and dew points should be logged once per watch, as well as the sea temperature, as these may change considerably over a short period. This information should be recorded for each hold together with the times of starting, stopping or resuming ventilation and the reasons for doing so.

If the Three Degree Rule has been followed, a record should be kept of the ambient air temperature and the sea temperature once per watch, together with the average temperature of the cargo at the time of loading. Again, ventilation details should be documented for each hold. If bad weather prevents ventilation, the ship staff should record this. If possible, staff should take photographs of the prevailing weather conditions, especially if sea water or spray is being shipped on deck, and a Sea Protest should be issued.

COMMON PROBLEMS FOUND IN VENTILATION LOGS

- Using the least appropriate rule for the given circumstances. For example, the temperature of the cargo on loading could be provided and the holds sealed following fumigation, yet the Dew Point Rule is used.
- Not commenting in the log that ventilation was not conducted due to fumigation.
- Not stating in the log which rule is being followed when deciding whether or not to ventilate.
- Ventilation only occurring during the day, with no reason recorded as to why ventilation has not occurred at night. Night time may be the best time to ventilate. However, crew availability and the prevailing conditions may mean it is difficult to achieve.
- Crew taking the dew point measurement from the hold at the time when fumigation documents state the hold should not be entered.
- Ventilation logs detailing only one set of measurements a day. This does not demonstrate that the cargo has been ventilated when appropriate.
- Insufficient notes detailing why ventilation has stopped. Ventilation can occur in the rain, providing the requirements of the rule being followed are met and the ventilation system on board does not allow rain water ingress.
- Ventilation continuing when the conditions for the rule being followed are not being met.
- Ventilation start and stop times not being recorded, preventing the length of the ventilation period from being determined.
- Ambient temperatures not being recorded when not ventilating.
- Incidences of wet bulb temperatures being recorded as higher than dry bulb temperatures, which is impossible.
- Large variations in dry and wet bulb temperatures inside the cargo holds, which is unlikely and indicates measurement errors.
- Inconsistent entries when recording ventilation data in the logbook.

Examples of blank ventilation logs for each of the rules can be downloaded here: <https://bit.ly/cargovent>
Members requiring any further guidance are advised to contact the Britannia Loss Prevention department.

IMSBC CODE AMENDMENTS 06-21

WHAT IS CHANGING?

WHEN IS IT CHANGING?

VOLUNTARILY SINCE **1 JANUARY 2023**

MANDATORY FROM **1 DECEMBER 2023**

THE INTERNATIONAL MARITIME SOLID BULK CARGOES (IMSBC) CODE HAS BEEN AMENDED. THE RECENT AMENDMENTS INCLUDE REVISIONS TO EXISTING SCHEDULES FOR SOLID BULK CARGOES AND ALSO SOME REVISED DEFINITIONS.

DETAILS OF THE MAJOR CHANGES

There is a revised definition for Group A cargoes, which now includes dynamic separation, as well as liquefaction. Dynamic separation is defined as: "the phenomenon of forming a liquid slurry (water and fine solids) above the solid material, resulting in a free surface effect which may significantly affect the ship's stability."

The definition of a Group A cargo under the Code is now: "Group A consists of cargoes which may possess a hazard due to moisture that may result in liquefaction or dynamic separation if shipped at a moisture content in excess of their transportable moisture limit."

AMMONIUM NITRATE BASED FERTILISER (NON-HAZARDOUS)

The existing schedule has been removed and is replaced by two new schedules:

- **AMMONIUM BASED FERTILISER – GROUP C:** covers straight nitrogen based fertilisers and compounds that fall within defined composition limits.

- **AMMONIUM NITRATE BASED FERTILISER MHB – GROUP B:** material that has not been assigned a UN number but is classified as a Material Hazardous only in Bulk (MHB). Cargoes that are listed as MHB are those that have hazards not found in the IMDG code (hazardous goods in packaged form) and are only hazardous in bulk form.

SUPERPHOSPHATE (TRIPLE GRANULAR)

The existing schedule has been changed and the new amendments to the Code have redesignated this cargo as Group B. This change has been brought about as it has been noted that the dust of this cargo is corrosive to eyes. Group B cargoes should be individually listed on the vessel's Document of Compliance (DoC) to allow carriage. Therefore, it should be checked before loading if the vessel's DoC permits carriage of the proposed cargo. If not, the Recognised Organisation issuing the certificate should be consulted. Where carriage is permitted by the DoC, any notes in relation to the particular cargo concerned should be complied with. Masters are to ensure that they are familiar with the changes to this schedule before loading.

CLAM SHELL

A new schedule that has been added to Appendix 1 of the Code following these amendments. Clam Shell is defined as a Group C cargo under the Code and is a by-product that is generated from the clam farming process. This schedule only applies to whole clam shells.

LEACH RESIDUE CONTAINING LEAD

This has also been added as a new schedule to Appendix 1 of the Code. This cargo sits within both Groups A and B and is therefore liable to liquefy/dynamically separate and is known to possess chemical hazards.

For details on the hazards, precautions and other carriage requirements for these new or amended schedules, the IMSBC Code should be consulted. For any further guidance, please contact the Loss Prevention department.

CLAIMS AND LEGAL

OFF HIRE FOLLOWING FAILED HOLDS INSPECTION



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WHERE A VESSEL IS PLACED OFF HIRE FOLLOWING A FAILED HOLDS INSPECTION, THERE IS AN IMPLIED OBLIGATION FOR THE PARTIES TO EXERCISE REASONABLE DILIGENCE TO HAVE THE HOLDS RE-INSPECTED WITHOUT UNDUE DELAY.

In a recent dispute arising from a failed holds inspection, the English High Court considered whether Charterers were in breach of an implied obligation to have the holds re-inspected without delay, and whether such an implied term meant that the vessel went back on hire immediately after the holds had been cleaned (*Pan Ocean Co Ltd v Daelim Corporation* [2023] EWHC 391 (Comm))

BACKGROUND

Charterers and Owners had entered into a trip time charterparty on an amended NYPE 1993 form for the carriage of bulk urea. The relevant off hire provisions in Clause 69 provided:

"Vessel's holds on delivery or on arrival 1st load port to be clean swept/washed down by fresh water and dried so as to receive Charterers intention cargoes in all respects free of salt, rust scale and previous cargo residue to the satisfaction of the independent surveyor.

If vessel fails to pass any holds inspection the vessel to be placed off-hire until the vessel passes the same inspection and any expense/time incurred thereby for Owners' account."

Shortly after arrival at the load port on 16 February 2017, the vessel's holds failed a joint surveyor's inspection due to the presence of rust, paint flakes and previous cargo residue. At 15:30 on 19 February, the vessel's Master notified the agents that the holds had been cleaned and requested a re-inspection. However, earlier that day the vessel had been ordered to anchor due to port congestion. The re-inspection, therefore, did not take place until the vessel returned to berth 12 days later, and the holds were passed on 4 March.

LEGAL ISSUES

In arbitration, Charterers claimed that the vessel was off hire from 16 February until 4 March. Owners contended that as from 15:30 on 19 February, the holds were ready in all respects to load the cargo, whereupon the vessel went back on hire. Owners argued that Charterers should have taken steps to arrange the re-inspection immediately upon receipt of notification by the agents but failed to do so. Owners also alleged that Charterers had failed to do so because the cargo was not available for loading.

The arbitrators decided the dispute in Owners' favour, finding that once the holds had been cleaned, Charterers were under an implied obligation to have the vessel re-inspected without delay. The tribunal concluded that keeping the vessel at anchor for 12 days was unreasonable and that Charterers were obliged to keep any delay to a minimum. The arbitrators awarded Owners their claim in full.

On appeal, the High Court held that the arbitrators were wrong in law to imply a term requiring Charterers to re-inspect the holds at 15:30 on 19 February immediately upon receipt of notification that the holds had been cleaned. Instead, what the implied term required was for reasonable diligence to be exercised to have the vessel re-inspected without undue delay. Therefore, the vessel did not go back on hire immediately once the holds had been cleaned, but only at the point when re-inspection ought to have taken place if both parties had exercised reasonable diligence to arrange re-inspection without delay.

ANALYSIS

In their reasoning, the Court found that the arbitrators had applied the correct test for implying the term into the charterparty. That is whether, on an objective basis, the implied term is necessary to give business efficacy to the contract, or is so obvious that it goes without saying that it should be included in the agreement.

As regards the effect of the implied term, the Court dismissed the contention that the implied term placed a strict obligation on Charterers alone to arrange the re-inspection, where the appointment of a surveyor required Owners' cooperation. In order to give business efficacy to Clause 69, the Court held the implied term meant that the parties had to "carry out any re-inspection with reasonable diligence and without any undue delay."

Accordingly, the Court overturned the arbitrators' finding that Charterers were obliged to re-inspect the holds as soon as the holds had been cleaned and that the vessel went back on hire immediately. What the implied term required was for reasonable diligence to be exercised to have the vessel re-inspected without undue delay. In that regard, the Court remitted the case back to the arbitrators to reconsider precisely when the vessel went back on hire.

SANCTIONS, FORCE MAJEURE AND THE SCOPE OF “REASONABLE ENDEAVOURS”



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IN THE SEPTEMBER 2022 EDITION OF RISK WATCH WE REPORTED ON THE ENGLISH HIGH COURT'S DECISION IN MUR SHIPPING BV V RTI LTD THAT A PARTY IS NOT REQUIRED TO ACCEPT THE NON-CONTRACTUAL PERFORMANCE OF A CONTRACT IN ORDER TO CIRCUMVENT THE EFFECT OF A FORCE MAJEURE CLAUSE. THE COURT OF APPEAL HAS NOW OVERTURNED THAT DECISION AND HELD THAT A “REASONABLE ENDEAVOURS” REQUIREMENT IN A FORCE MAJEURE CLAUSE OBLIGED OWNERS TO ACCEPT PAYMENT IN EUROS NOTWITHSTANDING THEIR CONTRACTUAL RIGHT TO RECEIVE PAYMENT IN US DOLLARS.

(MUR Shipping BV v RTI Ltd [2022] EWCA Civ 1406)

In June 2016 Owners entered into a contract of affreightment (COA) with Charterers, under which Owners agreed to carry several consignments of bauxite from Guinea to Ukraine. The COA provided that neither party would be liable for a failure to perform the COA due to a force majeure event, with force majeure defined to include a:

“state of affairs which... [is] outside the immediate control of the Party giving the Force Majeure Notice... [and that cannot] be overcome by reasonable endeavours from the Party affected...”

On 6 April 2018, the US Department of the Treasury's Office of Foreign Assets Control (OFAC) sanctioned Charterers' parent company, listing them on both their Specially Designated Nationals and Blocked Persons List. On 10 April 2018, Owners sent a force majeure notice to Charterers, stating that it would be a breach of sanctions to continue with the performance of the COA, noting that payments under the COA, which by its terms were expressly required to be made in US dollars, would no longer be permitted.

Charterers rejected the notice, stating that the sanctioning of their parent company would not interfere with cargo operations, that payments could alternatively be made in Euros and that, as a Dutch company, Owners were not a “US person” caught by the sanctions.

Owners disagreed and refused to nominate further vessels under the COA. Charterers therefore sought alternative tonnage and brought a claim against Owners for their losses in arbitration in London.

The Tribunal found in favour of Charterers on the grounds that acceptance by Owners of their proposal to pay in Euros fell within the scope of “reasonable endeavours” and determining that making payment in Euros was a “completely realistic alternative” to payments in US Dollars. The Tribunal held that Owners could have accepted payment in Euros without suffering any loss, as Charterers could have reimbursed Owners for the costs of the conversion (which Charterers had agreed to do).

Owners appealed to the English High Court on the issue of whether “reasonable endeavours” extended to accepting payment in Euros. The High Court agreed with Owners and overturned the Tribunal's decision holding that the scope of an obligation to make “reasonable endeavours” to perform a contract is restricted to performing what the parties have contractually agreed. The acceptance of Euros would have amounted to “non-contractual performance” and such action was, therefore, beyond the scope of what were “reasonable endeavours”.

Charterers appealed and the Court of Appeal has reaffirmed the decision of the Tribunal. In a 2:1 majority ruling, the Court held that the wording of the force majeure clause expressly permitted the variation of the agreed performance provided that the end result would be the same and there would be no detriment suffered by the receiving party.

The Court of Appeal's decision turned on the specific wording of the force majeure clause and it was emphasised that each force majeure clause “must be considered on its own terms”. However, the decision highlights the difficulties that can arise in relying on force majeure clauses and the importance of careful drafting.

It is possible that the reversal of the High Court decision may lead to some uncertainty where contracts contain force majeure clauses that feature a “reasonable endeavours” obligation, with sanctioned counterparties proposing alternative means of performance of the contract. It remains to be seen whether the decision will be appealed to the Supreme Court.

THORCO LINEAGE



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CLARIFICATION OF LIMITATION UNDER ARTICLE IV (5)(A) OF THE HAGUE VISBY RULES WHERE THERE IS BOTH PHYSICAL DAMAGE AND ECONOMIC LOSS TO THE CARGO

Trafigura PTE Ltd v TKK Shipping Ltd (“*THE THORCO LINEAGE*”) [2023] EWHC 26 (Comm)

Article IV(5)(a) of the Hague Visby Rules (HVR), which relates to the carrier’s right to limit liability provides that:

“Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of 667.67 units of account per package or 2 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher.”

The *THORCO LINEAGE* suffered a grounding due to a main engine failure and had to be re-floated by salvors. As a result of the grounding, about 7.43% of the cargo on board suffered physical damage.

Cargo interests claimed about USD8.5 million from the carrier in respect of their contribution to salvage costs, the physically damaged cargo and the costs of on-shipment and cargo disposal. They contended that the meaning of the words “goods lost or damaged” in Article IV (5)(a) referred to the goods being lost or damaged physically and economically. However, the carrier argued that its liability should be limited

by reference to the weight of the cargo that had suffered physical damage, in accordance with the words “weight of the goods lost or damaged” in Article IV(5)(a). This would allow the carrier to limit its liability to about USD800,000.

The question of law referred from arbitration to the English High Court was whether the carrier was entitled to limit its liability under Article IV (5)(a) of the HVR, and if so, in what amount in respect of each head of loss. In answering this, the Court considered whether the words “goods lost or damaged” extended to economic loss or damage or whether they referred only to physical loss or damage.

The Court held that “goods lost or damaged” included goods which were economically damaged. In reaching this conclusion, the Court refused to follow the decision in *The Limnos* [2008] EWHC 1036 (Comm) that the words “goods lost or damaged” referred only to physical damage. The Court noted that to limit liability by reference to the physically damaged cargo only would not have reflected the intention behind the HVR. The Court therefore found in favour of cargo interests and that the value of the salvaged goods had diminished on arrival because of the salvage and on-shipment charges. The limitation would, therefore, be based on the weight of the whole cargo.

This decision provides clarification in relation to the extent of limitation under Article IV (5)(a) of the HVR where cargo has suffered both economic and physical damage as it means that carriers will not be able to limit their liability for economic loss where only a small quantity of cargo is physically damaged.



