Issue number 47 December 2015

NEWS

Britannia

The Britannia Steam Ship Insurance Association Limited

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Insurance Association Limited

Letter from the Chairman

One of the inevitable aftermaths of a world recession is a glut of ships as growth in trade lags behind the increase in global fleet capacity. The depressed freight rates of the past few years show only intermittent relief with the tanker sector the exception. It is hard to predict the effect that changes such as the Chinese economic situation, low commodity and bunker prices, the entry of Iran into markets and the Suez Canal expansion will have over the next year other than to say that uncertainty is now the one certainty!

There has also been change in the commercial insurance market with consolidation among a significant number of major players – MSI/Amlin; XL/Catlin; Brit/Fairfax; Ace/Chubb etc. as they seek to achieve scale in a soft market – although Zurich/RSA has been called off. Within the P&I world we have seen further diversification from some members of the International Group into other areas of 'non-mutual' business, although Britannia and several other clubs have remained determinedly monoline.

Against this backdrop it is pleasing to report that Britannia remains in good health with Standard & Poor's (S&P) confirming our 'A-Stable' rating, noting our 'extremely strong capital adequacy'. Claims have returned to a more normal pattern after three very volatile years – two extraordinarily heavy followed by one very light. The strength of the non-profit making mutual model is that, where we find the actual claims experience to be less than predicted, we can adjust the deferred call to suit. This has enabled Britannia to waive some USD44m of premium in the past four years to the benefit of our Members.

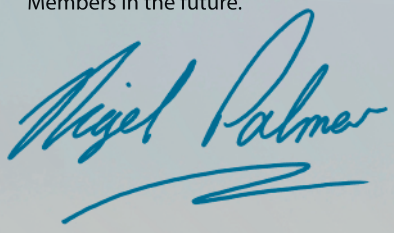
At our October meeting the Committee was able to agree to a modest 2.5% increase in calls for Class 3, necessary to ensure that the Club's underlying finances keep pace with claims inflation, and no increase for Class 6. We remain firmly of the belief that, in the long term, the mutual P&I system provides shipowners with the high level of cover they need at the lowest cost.

Security of ships and seafarers continues to give concern. Although the situation in the Gulf of Aden and off Somalia has improved considerably, that off West Africa has not. In addition there has been a resurgence of 'boarding and robbery' cases in South East Asia with 48 incidents in the first half of this year and 12 ship hijackings. The levels of physical violence seen in some of these actions is appalling – only firm action by the Authorities in these areas will resolve this 'at source', but we remain ready to support Members where we can.

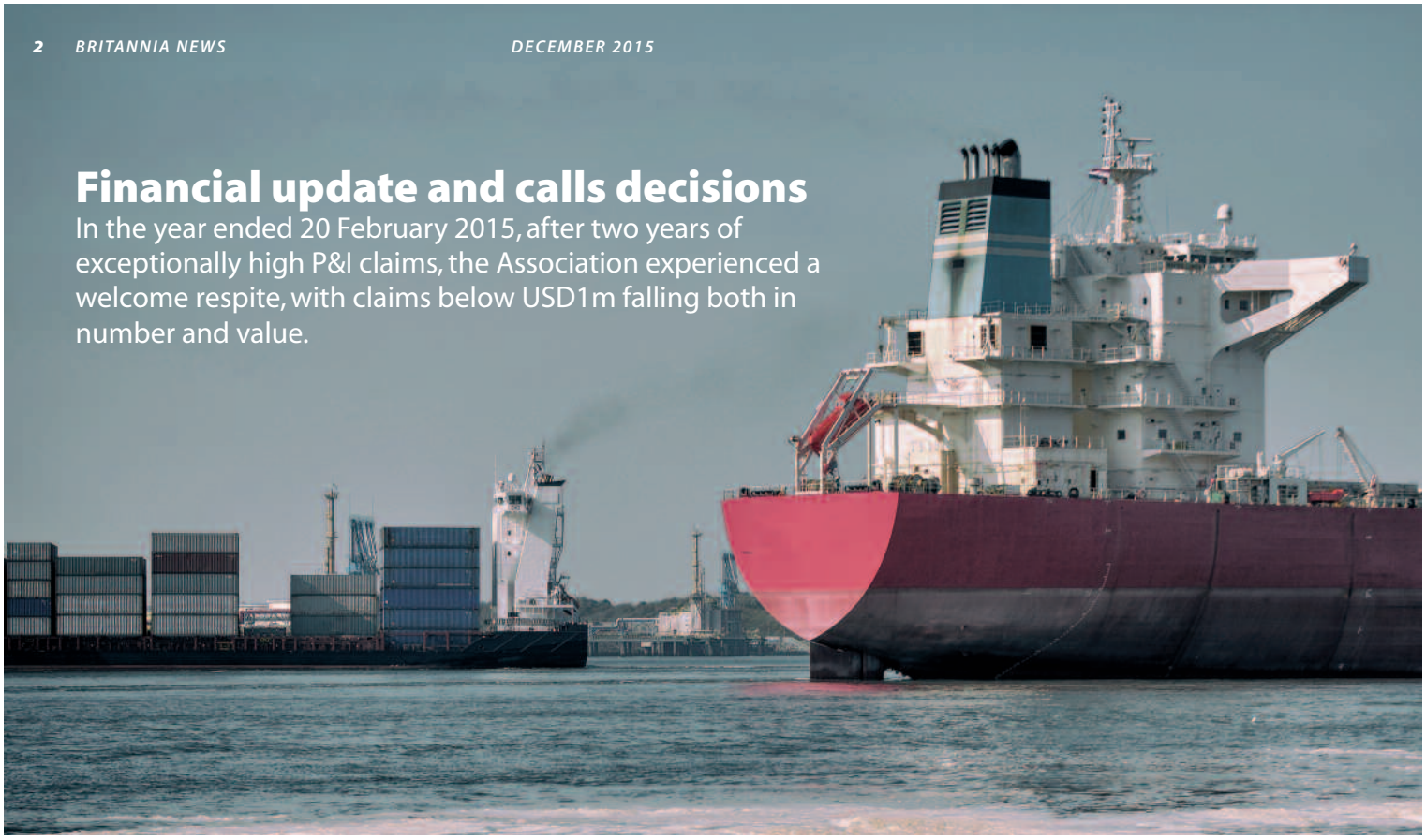
Levels of crew competence are always a subject of debate in shipping circles, and this is particularly true in recessionary times when training budgets come under pressure. Short-term savings in this area inevitably lead to higher claims in the future – and ultimately feed through into higher P&I premiums. Britannia is fortunate in having a membership that understands the need for good ship management, but these are difficult times.

Problems with cargo liquefaction have dogged our industry for many years, often with tragic consequences, and hopefully activity at the IMO around this issue will lead to improvement in the future. Too many ships and lives have been needlessly lost and action is urgently required at an international level.

Discussions with the regulatory authorities in the UK over the Club's governance structures has led to agreement that we should move over the next year to having a smaller Board in place of the current Committee as the 'regulated entity'. Whilst this will have some benefits it is essential that it does not lead to a disconnection with our shipowner Members. The Members' wider Committee will continue to have an advisory and consultative role to ensure that Britannia remains focused on the needs of our Members in the future.



Nigel Palmer OBE Chairman



Financial update and calls decisions

In the year ended 20 February 2015, after two years of exceptionally high P&I claims, the Association experienced a welcome respite, with claims below USD1m falling both in number and value.

There have also been noticeably fewer large claims (i.e. those expected to cost the Association more than USD1m each) in the 2014/15 policy year. This is significant because it is those claims which have the biggest impact on the Association's finances.

This more benign claims experience in the policy year, and strong positive development in the claims position of older policy years, where the actual outcome of claims proved to be lower than expected, contributed to an underwriting surplus for the year of USD41m.

In the first six months of the current year, which will end on 20 February 2016, the number of large claims reported is a little higher than it was this time last year and, as a result, total claims within the Association's retention at the six-month stage are higher. However, claims values remain well short of the figures for 2012/13 and 2013/14 at the same stage. Over the same period, claims in older policy years have continued to develop positively, which has allowed further releases of surplus claims reserves from those years.

Investment performance in the year ending 20 February 2015 was disappointing and well down on the five previous years. While equities returned around 8%, bond markets, impacted by uncertainty over future increases in interest rates, struggled to make any positive contribution. In addition, the strong US dollar meant that investments in other currencies were marked down. The actual return achieved across the portfolio was USD4m, which represents a return of just 0.4%. In the first six months of the 2015/16 policy year, investment returns have continued to be disappointing, affected by concerns over the slowing of the growth rate in China, the impact of lower commodity prices and continuing uncertainty on interest policy. However, the Association holds a diversified portfolio of investments and maintains a very substantial investment reserve, both of which cushion against short-term adverse returns. In addition, the Association has a long-term investment strategy and is therefore well placed to enjoy the benefits when markets strengthen in the future.

Despite the lower contribution from investment returns in the year to 20 February 2015, the Association's capital position improved compared to the previous year end. In addition, Boudicca's funds also increased, the result of investment returns from Boudicca's portfolio and the fact that, as Britannia's claims have improved, the reinsurance recoveries that Boudicca had been expecting to pay have also fallen. Overall, the Association's capital position (which includes the benefit of surplus funds in Boudicca) projected forward to 20 February 2016 shows modest headroom over the economic capital benchmark.

In September 2015, S&P published the Association's second interactive credit rating, which continues to rate the Association as 'A', which is 'strong', and maintains the Association's stable outlook.

Against the background of the Association's continued financial strength, on 20 October the Committee of Britannia met in Budapest to decide on the terms of the 2016/17 renewal and the appropriate actions to take in relation to the deferred calls in prior years.

For Class 3 (P&I) the Committee approved, for the third year running, a 2.5% general rate increase for advance calls, with the deferred call remaining at 45%. The level of the deferred call reflects the Committee's cautious assessment of the claims environment faced by Members, but it also gives financial flexibility should the year prove to be more benign than expected.

The ability of the Association to use its financial strength to benefit a loyal membership is one of the key strengths of the mutual P&I system.

In respect of minimum deductibles, the Committee decided that for 2016/17 there would be no change.

In respect of prior policy years, the Committee decided that:

- the 2012/13 policy year would be closed with no further calls;
- the deferred call for the 2014/15 policy year, which was originally set at 45% but reduced last year to 40%, should be further reduced to 37.5%, benefiting Members by USD4.1m. This reduced deferred call would be collected in two tranches – 17.5% immediately and the remaining 20% in October 2016; and
- Members should continue to budget for a deferred call of 45% for the 2015/16 policy year originally advised to them.

Class 6 (FD&D) has continued to perform well and its reserves are now back to an acceptable level. The Committee therefore decided that, for the third year in a row, there should be no general increase in the 2016/17 advance call and that the deferred call for Members with mutual entries would stay at the reduced rate agreed last year of 30%.

In conclusion, the Association remains financially very strong, as confirmed by S&P's 'A' rating. That solid financial footing continues to enable the Association to take a positive view of the future. Members entered for Class 3 will again benefit from a low general increase going into the 2016/17 renewal, together with a further waiver of the budgeted deferred call for 2014/15. Class 6 has also continued to perform strongly and again, Class 6 Members will reap the benefits at renewal.

This final point has been made before but it is one that merits repetition: the ability of the Association to use its financial strength to benefit a loyal membership is one of the key strengths of the mutual P&I system and one that the Association fully embraces.

Committee news

There have been a number of changes on the Committee over the past year. Dag von Appen was appointed on 20 April 2015 and Susan Dio was appointed on 20 October 2015. After the meeting in May, S-D Lee resigned and John Ridgway retired from the Committee. The Chairman thanked both of them for their valuable contribution.

In January 2015, the Committee meeting was held in London at Regis House and in May the Committee travelled to Dubai. The most recent meeting, in October, was held in Budapest and matters considered included the call recommendations (reported in more detail elsewhere), board structure and governance issues.

Prior to the meeting, there was a tour of both the Buda and Pest areas of the city, including a short cruise with lunch on the Danube.

Claims review

In last year's claims review, we reported how well the 2014/15 policy year had started. Fortunately, this positive performance continued throughout the policy year and total claims are currently estimated at just over USD146m.

The total claims cost for the 2014/15 policy year includes just 16 large claims where the amount involved exceeds USD1m. This is the lowest number of large claims reported to the Club in any particular policy year since 2010. This is significant because large claims can have a disproportionate influence on a year's result, accounting for more than 50% of the total claims exposure in some years.

Only nine months of the current policy year have passed and it is difficult, at such an early stage, to predict the final result. However, it would appear that there has been an increase in the overall level of claims – though not to the very high levels seen in the 2012/13 and 2013/14 policy years.

As at 20 September 2015 the Club has been notified of almost 3,000 claims valued at USD85m in the aggregate. This compares with 2,700 claims valued at USD59m at the same stage of development in the 2014/15 policy year. Furthermore, although we have already been notified of 12 claims in excess of USD1m (which is double the number notified at the same point last year), it is not exceptional and actually compares favourably with the 17 reported in the 2013/14 policy year.

We have previously highlighted the random nature of large claims and the difficulties that arise when trying to ascertain trends or themes. However, as we saw last year, three of this year's large claims involve collisions, all of which occurred while the ship was under pilotage. In each case, the ships were undertaking passing manoeuvres. Unfortunately, these failed either due to poor communication and a lack of understanding of the intentions of the passing ship or as a result of hydrodynamic interaction. These incidents give credence to the often repeated view that greater emphasis needs to be placed on training to ensure the highest levels of competence for bridge teams. In particular, officers must understand the importance of being able to challenge the pilot whenever a passing or overtaking manoeuvre appears to be inappropriate.

Four large claims involve shipboard fires, three of which relate to containerised dangerous cargo incorrectly declared or packaged. This is not an experience limited to Britannia; in response to a spate of container ship fires, the International Group (IG) Claims Co-operation Sub-Committee has been focusing on the problem and disseminating information relating to the misdeclaration of containerised goods. There are also plans to re-establish the IG Calcium Hypochlorite working group in order to review previously issued carriage guidance and FAQs.

Other large claims this year have involved an allision resulting in substantial structural damage to a gas platform; a tug's propeller that was fouled and is said to have caused damage to the tug's propeller shaft and gearbox; damage to refrigerated cargo resulting from a breakdown in generator power; the contamination of a consignment of para-xylene and a bunker spill which occurred during a heavy fuel oil transfer.

The Association's loss prevention team continue to use their technical seminar programme and navigation workshops to emphasise the importance of passage planning, collision avoidance and bridge team management. These presentations to serving senior officers are enhanced by the use of computer-generated bridge simulations created with the assistance of Warsash Maritime Academy. Our risk managers have also presented papers on the practical use of ECDIS, with an emphasis on how to avoid ECDIS-assisted accidents.

This year has also seen further in-depth root cause analysis of every high value claim notified to the Club, with the findings disseminated through articles published in *Risk Watch* and *Health Watch*. The *Risk Watch* series of posters are particularly relevant as they focus on compliance with the collision regulations. In the most recent edition, emphasis was placed on the need for risk assessment, followed by prompt and decisive action whenever the risk of collision is found to exist.

In the previous edition of *Britannia News* we reported on the work being undertaken by the IG Large Casualty Working Group to create a Memorandum of Understanding (MOU) designed to promote an effective response to casualties and to encourage preparedness. During the course of last year, Australia and New Zealand have signed the MOU and discussions are ongoing with administrations in Singapore, the UK, the EU, Canada and the US. Initial engagement has also taken place between the IG and Hong Kong, Malaysia and Indonesia. Representatives of the IG will also shortly be meeting with South and Central American maritime administrations in order to explain the IG's outreach programme and to promote the MOU. The working group has collated data on the most recent major casualties involving salvage and wreck removal and has found that the original findings, believed to influence the overall cost of the operation, remain valid.

The IG was also invited by the European Maritime Safety Agency (EMSA) to participate in a training exercise dealing with the EU operational guidelines to be followed in respect of ships seeking a place of refuge. The workshop was hosted by Transport Malta and gave Member States the opportunity to consider how they would respond to an application for refuge made by a tanker that had been damaged following a collision – and where there was a clear threat of pollution. The guidelines emphasise the need for decisions to be made on the basis of a technical assessment of the casualty and the availability of a suitable place of refuge rather than the insurance arrangements in place. The workshop went well and a number of delegates commented that the guidelines provided a useful framework and would help them to explain the best criteria to use when considering requests for refuge.

International Conventions continue to play a vital role in capping the cost of high value claims. On 14 April 2015 the Nairobi Wreck Removal Convention entered into force, providing uniform rules and procedures to ensure the prompt and effective removal of wrecks within a signatory state's Exclusive Economic Zone. The IG continues to advocate the extension of the application of the Convention into the states' territorial seas and at the time of writing, of the 25 states that have ratified the Convention, 13 states have opted to do so.

Claims review (continued)

As most wrecks occur within the territorial seas, this is encouraging. However, we are yet to see the Convention applied to an actual wreck removal case and therefore we must defer judgement on its effectiveness in terms of bringing transparency, proportionality and certainty.

The last year has also seen the entry into force of the new Limits of Liability under the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims (LLMC). These new limits expose shipowners to an increase in cost of approximately 50%, to account for inflation experienced between 1996 and 2010. The new limits came into force on 8 June 2015 and are applicable to states which have adopted the 1996 Protocol to the 1976 LLMC. Whilst we are yet to see an incident that actually attracts these new limits, it can be expected that this will lead to an increase in large claims costs – as it did when the 1996 Protocol was introduced.

Unfortunately, a recent decision of the Mexican Supreme Court calls into question the willingness of some courts to apply International Conventions. The Court ruled that an owner of an offshore supply vessel that struck a rig cannot benefit from the right to limit liability under LLMC because the rig did not have a reciprocal right to limit liability. The decision ignored conventional interpretation of how the LLMC works and the type of claims that it applies to. Hopefully this case will be nothing more than an aberration, but it causes concern and undermines the basic intention of the LLMC and a shipowner's statutory right to limit liability.

Following the *NISSOS AMORGOS* incident and the decision of the 1971 Fund Administrative Counsel to wind up the 1971 IOPC Fund, with effect from 31 December 2014, talks have been ongoing between the IG clubs and the IOPC Funds. It is hoped that an arrangement will be reached as to how interim payments can be made by the clubs to those affected by relevant spills, while ensuring the clubs' right to pay no more than the CLC limit is protected. We will keep Members advised of progress in this respect.

Crew claims continue to be split between illness and injury on a roughly two thirds/one third basis. However, whilst the number of claims is not increasing, the total cost of all such claims continues to rise. This, of course, is a result of more favourable crew contracts and higher awards – particularly in certain jurisdictions providing shipowners with significant numbers of seafarers.

The Philippines is a good example. Currently, labour law in the Philippines is heavily weighted in favour of the seafarer and many now recognise that a fairer balance between the rights of the seafarer and the shipowner needs to be achieved. Last year, the IG (through its Philippines Working Group) made a number of presentations to the Filippino Labour Courts, the Department of Labour and Employment and other interested stakeholders, highlighting the adverse effect that the process of garnishment (the execution of judgments while further appeals are still under way) is having on seafarers and owners – and indeed, on the reputation of the Philippines. On a positive note, new legislation will be coming into force to address the often extortionate fees that some 'ambulance-chasing' lawyers are charging their seafarer clients, and such charges will now be limited to 10% of the amount awarded. There is also a proposal for the introduction of an escrow system whereby disputed sums can be placed on deposit while the appeal process is still under way, but this is still in the early stages of consideration.

As has been widely reported in the international press, increasing numbers of commercial ships are being diverted to rescue migrants attempting to reach European shores, frequently in small boats unfit for the journey. In 2014, 800 merchant ships are said to have rescued some 42,000 migrants. The numbers are expected to be even higher in 2015. Under international law commercial shipowners are obliged to engage in rescue operations whenever necessary. However, there is a growing concern for the safety and wellbeing of the crew in these situations, given the number of migrants involved. For this reason, the International Chamber of Shipping has recently updated its guidelines. These guidelines set out steps that can be taken to help companies prepare for such rescue operations. They can make preparation in advance and can carry out regular drills to help prepare masters and the crew and to enable them to manage large scale rescue operations safely and successfully. The guidelines are available to download free of charge from the ICS website at the following link:

www.ics-shipping.org/docs/largescalerescue

Loss prevention focus: carriage of rice

Market conditions continue to be volatile in the global economy and there are few signs of a strong recovery in the freight markets. Shipowners anxious to secure reasonable freight rates sometimes commit their ships to unfamiliar trades and ports, which presents inexperienced ship staff with new challenges and risks.

Introduction

The carriage of bagged rice cargo is a potentially hazardous undertaking, with claims running to millions of dollars when problems arise – particularly in the trade between South East Asia and West Africa. The loss prevention department has worked with CWA Food and Dry Commodities Group to identify the problems encountered in this trade and to share with Members best practices that can eradicate or substantially reduce a Member's exposure to costly disputes and claims.

The major issue with cargoes of bagged rice is the formation of mould or caking which can often be attributed to condensation due to inadequate ventilation or water ingress. Other issues include shortages due to pilferage and damage to bags which are torn, slack or lost overboard during stevedore operations. Finally, infestation and fumigation problems are also common in this trade.

Origin of rice cargo

It is estimated that over 41 million tonnes of rice will be exported globally in 2015. The major exporting countries are Thailand, Vietnam, India, Pakistan and the US. Rice from South East Asian ports has traditionally been shipped in polypropylene bags, although some is now being shipped in containers. Rice is shipped in bags or in bulk from US ports and in bulk from the developing rice trade in South American countries. Club correspondents in Thailand have recently advised that, due to a stevedore shortage, a large proportion of rice exported from Thailand is currently being shipped in bulk.

Cargo quality

After harvesting, rice needs to be dried to ensure safe storage and carriage. If rice is not adequately dried or properly stored, it may become infested with insects or subject to mould growth and can also be contaminated by noxious odours.

Rice kernels should ideally have a moisture content of between 13% and 14%. Indeed, a moisture content of 14.5% should be regarded as the upper limit and in case of any doubt, samples should be sent for testing and a note of protest issued if the moisture content is any higher. A moisture content in excess of 15% when combined with a relative humidity of over 75% can also result in the cargo self-heating.

In addition to moisture content, temperature is a key factor when carrying rice cargo. While the ideal carriage temperature for rice is in the range of 5°C to 25°C, mould can develop at higher temperatures. When temperatures reach 25°C and above, the increased metabolic processes can also lead to rice kernels caking or sticking together.

Proper cargo care and careful monitoring by ship staff and surveyors during loading, carriage and discharge are essential in order to prevent damage to the cargo and avoid possible claims. Precautionary surveys at the load port are very useful in ensuring that the cargo is loaded and stowed in accordance with industry guidelines. They also provide good evidence of the quality of the cargo at loading. Similarly, tally and discharge surveys are essential to minimise cargo loss and damage, particularly due to mishandling or pilfering. The likelihood of pilferage of rice cargo in particular means the tally should be conducted as close to the ship's rail as possible.

Ship staff should monitor the local and forecasted weather conditions prior to and during loading and discharging in order that cargo operations can be stopped and the hatch covers closed in good time to minimise cargo damage due to precipitation.

Good practice guidelines during the various stages of carriage are as follows:

1) Pre-loading

Hold cleanliness

Food grade cargoes are susceptible to contamination by previous cargo residues, paint, rust chips and odours. Therefore, cargo holds should be properly cleaned and prepared, ideally to grain standards.
The accepted definition of 'grain clean' is provided by the National Cargo Bureau which states that: 'Compartments are to be completely clean, dry, odour-free and gas-free. All loose scale is to be removed.'

Hatch covers

Shipowners are responsible for maintaining hatch covers in a weathertight and good operational condition. Hatch coamings, hatch packing, ventilators, hydraulics, drain channels, etc. should be checked, ideally using ultrasonic tests to verify weather-tight integrity.

Dunnage

For bagged cargoes, the type and application of dunnage should be agreed in advance. Properly constructed and applied dunnage is essential to prevent wet damage due to condensation or water ingress, and the dunnage should cover the steelwork as much as possible.

The type of dunnage in general use is a layer of plastic sheeting and kraft paper placed directly against the side shell plating and tank top, with two layers of kraft paper on top of the stow. Bamboo, wooden or styrofoam struts placed along the sides of the hold and on the tank top are used to create a space between the steelwork and the bags.

Some charterers prefer to place the kraft paper directly on the tank top or side and then to cover with the plastic sheets, on the basis that this arrangement bundles the cargo as in a 'plastic bag'. However this method can leave the cargo particularly susceptible to damage by condensation and so ship staff should be aware of this possibility of condensation damage.

The ship staff should keep a photographic record of the applied dunnage prior to and after completion of loading.

2) Loading

The stowage plan should incorporate any specific stowage instructions, cargo separation, ventilation and dunnage requirements, particularly for bagged cargoes. Variations in ambient air and sea water temperatures en route can lead to the formation of condensation and, for bagged cargoes, adequate ventilation channels should be provided within the stow during loading. The location and number of these channels will be determined by the carriage instructions.

Ship staff should monitor the temperature of the cargo throughout the loading process and should also monitor the cargo being loaded for signs of damage, mould, insects, wetness or staining etc. Any cargo or bags not in sound condition should be rejected. A Letter of Protest should be issued and ship staff should always take photographs to help defend any potential claims.

Infestation and fumigation

The discovery of insects, pests or their residue in the cargo will generally lead to fumigation. Good sealing of all hatch covers, vents and accesses is necessary for fumigation to be effective. In accordance with the Merchant Shipping (Carriage of Cargoes) Regulations 1997, where pesticides are used in the cargo spaces of ships prior to, during or following a voyage, the IMO's MSC.1/Circ.1358 (30 June 2010) – 'Recommendations on the safe use of pesticides in ships' must be complied with, as appropriate.

Written instructions should be provided to the master by the designated 'fumigator-in-charge'. The instructions should be in a language readily understood by the master or his representative and must contain details about the type of fumigant used, the possible hazards to human health and the precautions to be taken.

The most widely used fumigant is phosphine (hydrogen phosphide PH3) but it must be noted that this gas is highly flammable and the fumigation process requires a longer period of time, at least three days, to work completely. Methyl bromide is used in situations where a rapid treatment of spaces or commodities is required and fumigation can normally be completed in less than 48 hours.

There are a number of different methods for application, particularly of phosphine. These include:

- surface application – fumigant applied to top surface of the bulk cargo

- trench application – a trench is dug and the fumigant placed at the bottom of the trench

- probe system – a probe is inserted into the cargo and fumigant introduced via the probe

- tubing along the side and bottom of cargo holds – using a combination of tubing and an explosion proof blower, via which the fumigant is circulated throughout the cargo.

Unfortunately, fumigation of bulk grains is often ineffective because it is difficult to attain a suitably deep penetration of the fumigant gas into the stow.

Following the fumigation process, ventilation of any treated spaces should be completed in accordance with the guidelines provided and a gas-free certificate issued before any personnel are permitted to enter.

3) During the voyage

Most agricultural products contain natural moisture and the degree to which they may absorb, retain or release that moisture will depend on the surrounding atmosphere.

Ventilation requirements

The purpose of ventilation is to replace some of the relatively warmer moisture-laden air inside the holds with drier outside air, thereby reducing the potential for condensation. Wherever possible ventilation should be conducted in accordance with the carriage instructions provided and, obviously, when the weather/sea conditions permit.

As a general rule, cargoes loaded in a cold climate and transported to a warmer climate are not ventilated, whereas cargoes loaded in a warm climate and transported to a colder climate are ventilated. If rice is being carried as a bulk cargo, surface ventilation will be required, and for bagged/general cargo, surface ventilation as well as ventilation via channels in the cargo will be required.

Condensation

'Ship's sweat' may form on the ship's steelwork (including the sides of the hold, hopper tanks and tank top) when the dewpoint of the air in the cargo hold is higher than the temperature of the steel.

'Cargo sweat' may form when the dew point of the air in the hold is higher than the temperature of the cargo i.e. if loading in cold climates and proceeding to warmer climates.

When deciding whether or not to ventilate the cargo, ship staff should use either:

- The Dew Point Rule, or
- The Three Degree Rule

Dew Point Rule

VENTILATE if the dewpoint of the air inside the hold is higher than the dewpoint of the air outside the hold.

DO NOT VENTILATE if the dewpoint of the air inside the hold is lower than the dewpoint of the air outside the hold.

Three Degree Rule

VENTILATE if the dry bulb temperature of the outside air is at least 3°C cooler than the average cargo temperature at the time of loading.

DO NOT VENTILATE if the dry bulb temperature of the outside air is less than 3°C cooler than the average cargo temperature at the time of loading, or warmer.

If bad weather prevents ventilation, the ship staff should record this, take photographs of the prevailing weather conditions, especially if sea water or spray is being shipped on deck, and issue a Sea Protest.

4) Discharge

Upon arrival at the discharge port, particularly if the port is in West Africa, it is common to face delays. When a delay occurs, it is vital that the ship staff continue to take temperature readings, ventilate the cargo as required and record all these actions in the deck and ventilation log books. To aid ventilation, if the weather conditions permit, the hatch covers can be opened, subject always to stability considerations. The cargo may also require refumigation and this will require the consideration of competent and reputable fumigators.

It is also advisable for ship staff to keep a close watch on the stevedores during all cargo operations and to take photographs of and report any stevedores that are:

- using hooks which may damage the bags
- mishandling the bagged cargo
- overloading slings
- apparently pilfering the cargo.

In the event of any of the above, the master should issue a Letter of Protest.

Conclusion

By following the key measures outlined in this article relating to the safe carriage and care of the rice cargo, it should be possible for shipowners to minimise and eradicate most claims. The loss prevention department is always available to support Members and respond to their questions. The master and the ship staff should remain watchful and alert throughout the venture. If a Member experiences any problems pre-loading, during the voyage or at a discharge port then they should contact the Club and the local Club correspondent.

Freight, Demurrage & Defence review

The collapse of the OW Bunker Group (OW) in November 2014 illustrates how an event in the wider shipping market can impact the number and cost of Freight, Demurrage & Defence (FD&D) claims.

After the 2013/2014 policy year – which produced significantly fewer FD&D claims than recent years – 2014/15 saw a modest increase in the number of notified claims. One reason for this was the number of claims that arose in connection with OW's bankruptcy.

The collapse of OW also provides a good example of the role that credit plays in the modern shipping industry and what can happen if a major link in the credit chain fails. The supply of fuel to ships is often arranged by shipowners (or charterers under a time charter) through an intermediary trading company selling the fuel on credit terms. In turn, the intermediary sub-contracts the physical supply of the fuel to a separate company, also selling on credit, this time in favour of the intermediary. The usual credit period is 60 days.

The fact that payment is often agreed on credit terms reflects the practical realities of supplying bunkers to ships, often at short notice and outside port limits, during the course of brief deviations from the contractual voyage that are made solely for the purpose of taking on bunkers. In extending credit to its buyer, the physical fuel supplier is to some extent protected – in some countries, the supply of fuel gives the supplier a right of lien or other preferential security over the ship for the price of the fuel.

Prior to its collapse the Danish company OW Bunker, together with its many international subsidiaries and affiliates, was a major player in the global bunker supply industry (it has been estimated that OW was involved in about 7% of all bunker supplies). OW usually acted as an intermediary trader, making its money on the difference between the price at which it sold and the price at which it bought fuel, although it did occasionally act as a physical fuel supplier as well. However, on 6 November 2014, and without any prior warning, OW filed for bankruptcy in the Danish court. Many of OW's subsidiaries and affiliates outside Denmark commenced related insolvency proceedings in the following days and weeks.

When OW filed for bankruptcy, many physical suppliers that had supplied fuel to ships on OW's orders had not been paid, reflecting the credit sale terms. Likewise, many shipowners and charterers had not yet paid OW for the fuel that they had ordered. These circumstances, together with the huge scale of OW's trading operations, have had significant repercussions for many shipowners.

On the one hand, OW's bankrupt estate and/or their bankers ING (to whom OW had assigned many of the payments that were due as security for a revolving credit facility) have claimed that they are entitled to receive payment from shipowners or charterers regardless of the fact that OW had not paid the physical supplier. They have also claimed that in some countries this gives them the right to arrest the ship to which the fuel was supplied (or another ship in the same or associated ownership). At the same time, physical suppliers have argued that the non-payment for fuel supplied to a ship at OW's request gives them a right of lien over the ship for the price of the fuel and, in turn, the right to arrest the ship. Shipowners have, therefore, been faced with competing claims and the risk of being required to make two payments for the same fuel stem. Both ING and physical suppliers have not hesitated to arrest ships in order to secure their alleged claims.

The problem has been exacerbated by the fact that just one stem can potentially involve the laws of several different jurisdictions. For example, on the orders of an OW subsidiary, fuel could be supplied to a ship in Dubai pursuant to a physical supplier's terms stating that UAE law applies to its contract with OW. However, the terms under which the shipowner has contracted with the OW subsidiary might provide for Singaporean law. The physical supplier might then arrest the ship in Australia for non-payment for the fuel and the Australian court decides that, under Australian law, it has to look to the law of the UAE to determine whether or not the supply of the fuel gives rise to a maritime lien over the ship. A further complication could be that English law governs the terms on which the OW subsidiary has assigned to OW's bankers the right to receive payment for the fuel as security. This typical example illustrates how a single fuel stem can give rise to issues involving the laws of four different jurisdictions and why OW related litigation has been so costly and complicated to deal with.

To try to protect their position, many shipowners have commenced legal proceedings in the countries in which they have faced competing claims. Unfortunately, the English, US and Singaporean courts have so far reached different conclusions on the extent of shipowners' ability to protect their position.

In New York and Singapore, various shipowners have commenced interpleader proceedings. This procedure is intended to protect a party that is facing claims from multiple claimants arising from the same obligation. In short, the court is asked to decide which claim the party should pay. In conjunction with this, shipowners in the OW litigation have also asked the courts to grant anti-suit injunctions to prevent claimants from proceeding against their ships in another jurisdiction while the court is deciding which claimant should be paid.

The New York court has held that it has jurisdiction to decide which claimant is entitled to be paid by the shipowner and that, if the shipowner deposits funds in the New York court as security, they also have authority to restrain the claimants from bringing proceedings against the shipowner for the same claim in other jurisdictions. In contrast, the Singaporean court has rejected interpleader proceedings on the basis that a contractual claim for payment brought against a shipowner by OW's bank (as OW's assignee) and a claim brought by physical suppliers against the ship pursuant to a retention of title clause in the supply contract (i.e. stating that the suppliers retain title to the bunkers until they have been paid) and/or a maritime lien are claims of a different nature which do not relate to the same debt obligation. This decision exposes shipowners to the risk of having to pay both OW (or, more accurately, its bank) and the physical fuel supplier (because the fact that a shipowner may have paid one of them will not be a defence to a claim by the other).

London arbitrators and the English courts have also decided an OW related case in a way that is unfavourable to shipowners. In *(1) PST Energy 7 Shipping LLC (2) Product Shipping & Trading SA v. (1) OW Bunker Malta Ltd (2) ING Bank NV [2015] EWHC 2022 (Comm),* known as the *RES COGITANS* case, the High Court and, in turn, the Court of Appeal upheld a London arbitration award in which the tribunal had decided that OW and its assignee bank were entitled to receive payment for fuel which they had contracted with shipowners to supply to a ship even though OW did not have title to the fuel at the time it was either supplied or consumed (OW did not have title because it had not paid for the fuel). This was because OW's contract with the shipowners was one under which OW had merely agreed to arrange for the delivery of the fuel to the ship and to ensure that the owner of the fuel (the physical supplier) consented to the fuel being used before receiving payment., which was implied as being the case. The contract did not, therefore, require OW to have title to the fuel.

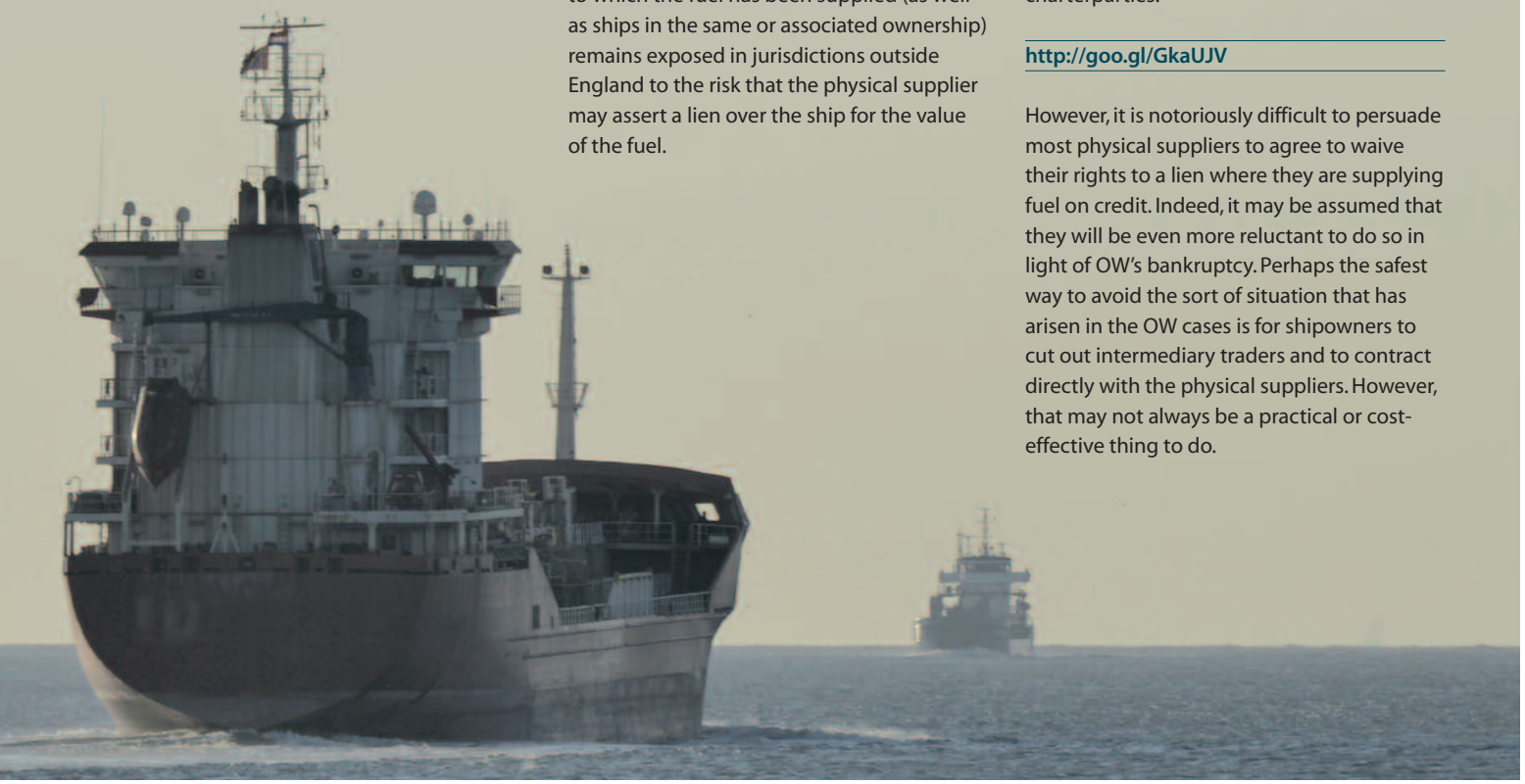
The effect of the *RES COGITANS* judgment is that OW or its assignee bank will be able, under English law, to claim payment from a shipowner or charterer with which it has contracted even though OW has not paid the physical supplier. At the same time, the ship to which the fuel has been supplied (as well as ships in the same or associated ownership) remains exposed in jurisdictions outside England to the risk that the physical supplier may assert a lien over the ship for the value of the fuel.

Unfortunately, the way in which much fuel is supplied to ships – on credit terms arranged by intermediary traders – means that it will always be difficult to avoid the sort of problems that have arisen in OW related cases in the event that the trader becomes bankrupt. Where the fuel has been supplied by time charterers, shipowners should have an indemnity claim against the charterers if the physical supplier pursues the shipowners for non-payment. However, such an indemnity claim is, of course, only as reliable as the charterers themselves.

As a possible way of avoiding the effect of the decisions in the *RES COGITANS* case, shipowners could try to insert into their contracts with intermediary companies like OW a term stating that, if the intermediary does not pay the physical suppliers for the price of the bunkers, the shipowner may do so and that such payment will discharge the shipowner's duty to pay the intermediary. In addition, shipowners could try to prevent physical suppliers from asserting a lien by making it clear (at the time fuel is supplied) that the supply does not create a lien over the ship, e.g. by inserting a 'no lien' clause on the bunker delivery receipt. In the context of a time charterparty, under which the time charterers are responsible for ordering and paying for fuel, the onus can be put on the charterers to ensure that the supply of fuel does not create a lien over the ship, e.g. by incorporating into the charterparty a clause like BIMCO's bunker non-lien clause for time charterparties:

http://goo.gl/GkaUJV

However, it is notoriously difficult to persuade most physical suppliers to agree to waive their rights to a lien where they are supplying fuel on credit. Indeed, it may be assumed that they will be even more reluctant to do so in light of OW's bankruptcy. Perhaps the safest way to avoid the sort of situation that has arisen in the OW cases is for shipowners to cut out intermediary traders and to contract directly with the physical suppliers. However, that may not always be a practical or cost-effective thing to do.



Sanctions update

There are currently 26 US sanctions programmes in place. Most are administered by the US Office of Foreign Assets Control (OFAC).

Background

US sanctions against Iran started in 1979, following the US Embassy hostage crisis. Sanctions were increased in 1984 and in 1996, with the passing of the Iran Sanctions Act. The 1996 Act was a response to the perceived threat of the Iranian nuclear programme and intended to discourage support for a number of groups that are considered by the US to be terrorist organisations. As a result, US persons are currently prohibited from engaging in virtually any transaction that has a connection with Iran.

In July 2010, sanctions against Iran were further bolstered by the Comprehensive Iran Sanctions, Accountability and Divestment Act (CISADA), which required non-US persons and companies to observe US sanctions. Sanctions affecting persons in or operating from another state are often referred to as secondary sanctions.

The enforcement of many of the provisions found in CISADA are the responsibility of the US State Department, rather than OFAC.

Further legislation in the form of Presidential Executive Orders and the Iran Freedom and Counter-Proliferation Act (IFCA) 2012 followed.

OFAC also administers a blacklist of more than 6,000 individuals, businesses and groups, known as Specially Designated Nationals (SDNs). The assets of those listed are blocked and US persons, including US businesses and their foreign branches, are forbidden from transacting with them.

Shortly after the implementation of CISADA, the EU introduced its own direct and indirect financial restrictions and specific trade restrictions on Iran. The relevant EU sanctions apply to:

- any party within the EU;
- any ship under a Member State's jurisdiction;
- any person, body or entity incorporated or constituted in a Member State; and
- any legal person doing business in the EU, including insurers, reinsurers and financial institutions within the EU.

Negotiations between the P5+1[1] and Iran began in 2013 in order to seek a resolution of the situation. In January 2014, both the US and EU suspended a limited number of sanctions[2] for six months, in an attempt to encourage Iran to compromise. As negotiations continued, this suspension was extended; it is currently due to expire on 16 January 2016. On 14 July 2015, an 'in principle' agreement, known as the Joint Comprehensive Plan of Action (JCPOA) was finally agreed with Iran.

[1] The UN Security Council (UNSC) permanent members (US, UK, France, Russia, China), plus Germany.

[2] The US suspended its sanctions preventing the transport of Iranian petroleum, petroleum products and petrochemicals, while the EU suspended sanctions against the transport of Iranian oil to countries holding a US waiver (i.e. India, Japan, Taiwan, South Korea, Turkey and China) and petroleum products.

The JCPOA

The JCPOA came into force on 18 October 2015 and will last for 10 years. The detailed timeline is as follows:

Finalisation Day 20 July 2015	The UN Security Council endorsed the JCPOA (UNSCR 2231)
Adoption Day 18 October 2015	Iran, EU and US make arrangements for implementation of JCPOA
Implementation Day Expected early 2016 – providing the IAEA verifies that Iran has implemented certain nuclear measures set out in the JCPOA	Majority of EU trade and finance related restrictions lifted; certain Iranian entities removed from the EU asset freeze list US ceases application of secondary sanctions related to Iran's nuclear activities; removes certain individuals and entities from the sanctions list
Transition Day 8 years from Adoption Day – or, sooner, if the IAEA reports that all nuclear material in Iran remains 'in peaceful activities'	Remaining EU sanctions relating to military and nuclear equipment, financing and technology lifted; additional entities removed from the EU frozen assets list US terminates secondary sanctions related to Iran's nuclear activities; additional persons removed from US sanctions lists
UNSCR 2231 Termination Day 10 years from Adoption Day	EU removes its remaining Iran sanctions framework

So, assuming IAEA verification is successfully concluded on Implementation Day, what will be the consequences in the EU and the US?

Implementation Day – and after

i) US and non-US persons

The impact in the US will be very limited. This is because even though most sanctions applicable to non-US persons will be lifted (secondary sanctions under CISADA), sanctions with respect to US persons (principally under the Iran Sanctions Act) will largely remain in place. In other words, US persons (wherever they are located) will still be prohibited from engaging in any economic activity with Iranian persons or entities.

This has potential consequences for non-US persons because even non-US persons run the risk of having transactions blocked if they are denominated in US dollars and pass through the US banking system. The only exception would be a transaction specifically authorised by the US government.[3]

The US will continue to enforce sanctions imposed on US and non-US person activities which involve support for terrorism and any abuses of human rights.

The most significant change relating to US persons, introduced by the JCPOA, related to their foreign subsidiaries and joint ventures. After Implementation Day, OFAC will license 'non-US entities that are owned or controlled by a US person to engage in activities with Iran that are consistent with [the] JCPOA'.

It is further anticipated that some persons will be removed from OFAC's SDN list. However, others will remain designated and it will be necessary to check whether a transaction involves a party who remains on the SDN list – in which case, the transaction will continue to be prohibited.

Furthermore, in the event that Iran violates the terms of the JCPOA, it is possible that sanctions could be re-imposed, or 'snapped back' with immediate effect (in contrast to earlier sanctions which commonly had a grace period before application).

As mentioned above, the major change to US sanctions against Iran involves non-US persons. Principally, post Implementation Day, non-US persons will be able, without any dollar limitation, to:

- purchase, transport and insure the transportation of crude oil, petroleum, petroleum products, petrochemical products and natural gas originating from Iran;

[3] OFAC had already exempted certain Iran-related transactions, such as the export of medicine, certain food items, educational services, sports activities etc.

On 14 July 2015, an 'in principle' agreement, known as the Joint Comprehensive Plan of Action (JCPOA) was finally agreed with Iran.

• sell, transport and insure the transportation of refined petroleum products to Iran;

• sell, lease or provide goods, services, technology, information or support that could facilitate or contribute to Iran's petroleum and petrochemical industries;

• provide significant financial, material, technological or other support to, or goods or services in support of any activity or transaction in connection with the energy, shipping or shipbuilding sectors of Iran, including transacting with the National Iranian Oil Company (NIOC), the National Iranian Tanker Company (NITC), the Islamic Republic of Iran Shipping Lines (IRISIL), South Shipping Line and the port operators of Bandar Abbas; and

• conduct associated service for all of the above, which includes insurance, reinsurance and broking.

ii) EU States

The effect on persons in the EU will mean that, after Implementation Day, the vast majority of previously sanctioned activities (and their associated activities) will be permitted. Broadly, for the shipping and insurance industries, the most significant are:

• the transfer of funds between EU persons, entities or bodies and Iranian persons, entities or bodies without the requirement for authorisation or notification;

• the opening of new branches etc. of Iranian banks in EU territories;

• the provision of insurance or reinsurance to Iran, its government, an Iranian legal person, entity or body;

• the import, purchase, swap or transport of Iranian crude oil, petroleum and petrochemical products and natural gas;

• the sale, supply, transfer or export of naval equipment and technology for shipbuilding;

• shipbuilding;

• the provision of flagging and classification services;

• provision of bunkering or ship supply services.

However, certain restrictions related to dual-use goods (that is, goods, software, technology, documents and diagrams which can be used for both civil and military applications) and activities connected with or useful for the nuclear industry will remain in place.

Implications for shipowners

Clearly, providing Implementation Day takes place (following IAEA verification), non-US persons will be able to resume much commercial trading with Iran and Iranian companies. The impact on US persons will be very limited.

However, the risk of 'snap-back' sanctions cannot be underestimated and great care must be exercised in not breaching the US sanctions that will remain in place – including doing business with SDNs. It must be remembered that transactions involving US dollars which pass through the US banking system might still be blocked – subject to authorisation from OFAC.

Sanctions elsewhere

The relaxing of sanctions against Iranian entities is clearly the most significant change to affect shipowners. Nonetheless, sanctions remain in place in the US and the EU against Syria, Russia and the Ukraine. A broad summary of the restrictions currently in place is as follows:

Syria

US and EU sanctions have been implemented against Syria in response to the civil war there and are aimed at the Assad government. They are broadly similar. Both the US and EU prohibit dealings with certain Syrian parties connected with the government. In addition, the following trade restrictions have been imposed:

The US prohibits:

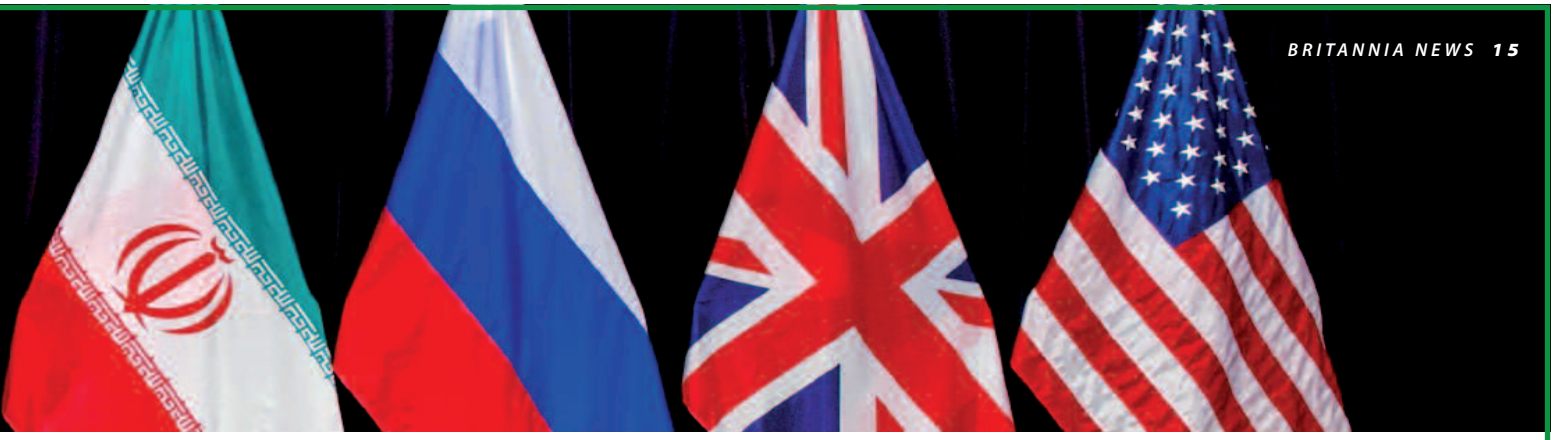
• importation of Syrian petroleum and petroleum products

• US persons from involvement in transactions involving Syrian petroleum or petroleum products

• related insurance.

The EU prohibits:

• import/transportation into the EU of Syrian crude oil and petroleum products



• export/transportation of jet fuel to Syria from the EU or by EU nationals

• export/transportation to Syria of goods that might be used for internal repression

• related insurance.

Russia/Ukraine

EU and US sanctions were introduced in response to Russia's annexation of Crimea and events in Ukraine. Again, prohibitions are placed on dealing with certain Russian/Ukrainian parties. In addition the following trade restrictions have been implemented:

The US prohibits:

• the supply of goods/services in support of exploration or production for deep water, Arctic offshore or shale projects in Russia.

The EU prohibits:

• export/transportation of goods to Crimea/Sevastopol that relate to transport, communications, energy and exploration/production of oil, gas and mineral resources

• export of dual-use goods to Russia

• supply of services necessary for deep water/Arctic offshore oil exploration and production or shale projects in Russia.

In retaliation to these sanctions, Russia has imposed its own sanctions, prohibiting the export to Russia of fruit, vegetables, meat, fish, milk and dairy products originating in the US and EU.

Steps Members can take to avoid breaching sanctions

Our general advice to Members therefore remains unchanged. The US and EU authorities expect shipowners to exercise due diligence (i.e. take reasonable care) to avoid breaching sanctions. Please note that it is for Members to determine whether or not a proposed transaction will breach sanctions and is not something which the Club can decide for Members.

There is no definitive checklist, but for any trade shipowners should consider the following issues as a minimum:

• are the charterers or any other parties in the contractual chain the subject of sanctions (i.e. are they on the US SDN list or the list issued by the EU)?

• what is the nature of the cargo?

• who are the shippers and the receivers, including the ultimate receivers?

• what banks are involved in the credit arrangements?

• can payments be made/received?

• what currency is being used?

• what ports will be visited?

• where will the vessel have to bunker?

• can insurance be obtained and will the insurers be able to settle/secure claims arising from the voyage?

• is the charterparty adequate? Does it include a sanctions and/or exclusion clause (e.g. BIMCO sanctions clause)? What are the trading limits?

• is a connection with a sanctioned country likely to delay payments? and

• what might be the effect on the vessel's future trading?

If in any doubt, please do not hesitate to contact the Managers for advice.

WELLNESS AT SEA
SAILORS' SOCIETY

Sailors' Society is now rolling out *Wellness at Sea,* its new coaching programme for seafarers, to shipping companies across the world. A valuable addition to current maritime training, this innovative programme has been welcomed by companies seeking to bring a human element to their predominantly technical based training. The programme has already been delivered to seafarers in the Philippines, India and South Africa and will soon be making its debut in China and the Ukraine.

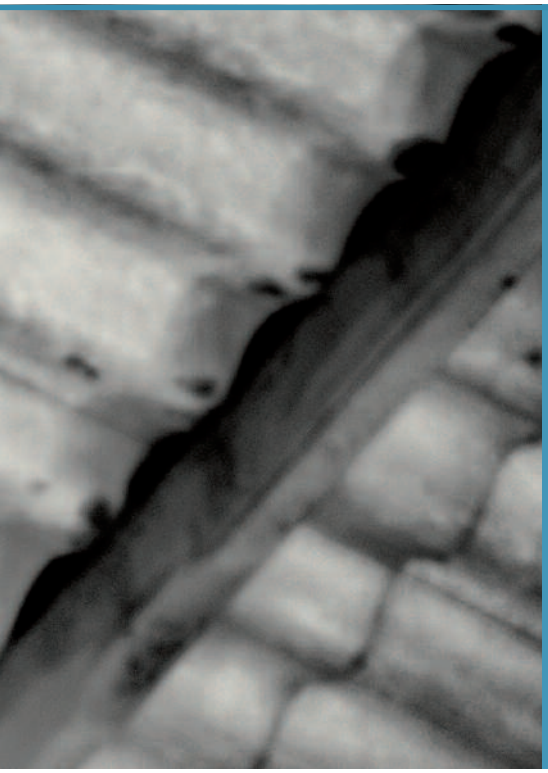
Wellness at Sea comes as a positive response to the call from within the industry to address the issue of poor mental health and the associated risks that can arise as a result of a life at sea. The course seeks to improve seafarers' onboard wellbeing by equipping them for life at sea and the challenges they might encounter.

According to research from the International Maritime Organization (IMO), 80% of incidents occurring at sea are attributed to 'human error', a term that disguises a variety of underlying problems. Fatigue, poor mental health and stress are concerns that are especially prominent among seafarers and can have a significant impact on their daily work. Poor wellness here can turn a rewarding and stimulating career at sea into a miserable and gruelling experience and, in some instances, can make the difference between safe transit and a major incident.

Sailors' Society believes that tackling issues in their early stages, before they impact on seafarers' lives, means the likelihood of not only fewer accidents, but a decrease in drop out rates and time lost due to sickness. An improvement in all of these factors leads to a more productive crew force. With shipping companies employing seafarers on long contracts, the potential to cut costs resulting from absenteeism and poor health is significant. It makes sound business sense that successful shipping is dependent on the wellbeing, or wellness, of the human element.

Interest in employees' health and wellbeing is beginning to grow across all industry sectors. A report produced in 2012 by the Mayor of London, entitled 'London's Business Case for Employee Health and Wellbeing' revealed that the UK loses around GBP103bn to GBP129bn each year due to poor health. If we take London as an example, with an average company of 250 employees losing GBP250,000 a year due to sickness absence, it would certainly seem that it is in the employer's best interests to reduce the ill-health of their employees.

The good news is that increasing numbers of companies are now beginning to take employee wellness seriously by offering a range of different initiatives, from healthy canteen options to healthcare cash plans to access to mental health services. A study conducted by Harvard University has shown that there is a strong case in favour of the effectiveness of these wellness initiatives for employees. The study revealed that company medical costs fell by USD3.27 for every dollar spent on wellness programmes, and that absenteeism costs fell by USD2.73 for every dollar spent. (Baicker, Cutler &Song, *Workplace Wellness Programs Can Generate Savings,* 2010.) It would certainly seem that good employee wellness has an important part to play in the effectiveness of any company including, therefore, those within the maritime industry.



Wellness at Sea has received praise for the emphasis that it places on human connection and its correlation with improved wellness. The programme is still in its early stages – the first group of seafarers took their training in June – but once under way, Yale University will conduct surveys in order to assess the measurable outcomes of the programme. We are confident that these results will confirm the notion that a healthy and contented crew force is indeed a more productive and safe one.

Supported by Wah Kwong, RightShip, Pacific Basin and Wallem, *Wellness at Sea* takes a positive approach to seafarer wellness, focusing not on the issue of human error, but on the value of the human element.

The approach that *Wellness at Sea* takes to seafarer wellness is a holistic one. The programme addresses 'wellness' as a holistic concept made up of five specific areas of wellbeing: Social, Emotional, Physical, Intellectual and Spiritual. The concept of holism can perhaps be better explained using Carl Roger's theory of person-centredness, which asserts that individuals exist in an 'ever-changing' world of experience which they respond to as an 'organised whole' under constant reform. (Rogers, Carl. *Client Centred Therapy,* Houghton Mifflin, New York, 1951)

The idea here is that a person brings with them a self identity as a holistic, multi-dimensional human being to every experience. If we follow this line of reasoning, wellness cannot simply be a one-dimensional phenomenon; how a seafarer experiences life at sea, how they react to an incident, or how they steer a ship are dependent on the seafarer's identity as an organised whole, a multi-dimensional human being.

Traditionally, the training of seafarers has been focused on technical training and has been steered very much towards the occupational side of seafaring. Competent seafarers, therefore, have usually been defined as people who have good navigational or engineering skills. While technical skills are, of course, an unnegotiable part of successful seafaring, the industry is now coming to realise that they may not be enough – spending months at sea requires more preparation than occupational training. If quality crew are to be retained, it is of paramount importance that they are first prepared for all areas of life at sea, not just their occupational work.

The goal of the programme is certainly not to prescribe a quick fix to better wellbeing. Rather, the ethos is that sustained wellness depends on a healthy and balanced mind-set, which takes the whole of the seafarer into account. *Wellness at Sea* seeks to empower seafarers to challenge their existing mind-sets and embark upon a life-long journey towards better wellness.

Course details

Wellness at Sea is available at two levels: an Officer Programme and a Cadet Programme. It is made up of five modules, which can be taken collectively. A short introductory module at the beginning of the programme explains the concept of holistic wellness and its application to the seafaring world. Links between all five sections are drawn in order to illustrate the holistic philosophy.

Sailors' Society offers a flexible tailor-made service, which means that any number of modules can be selected to meet your requirements. Delivery of the course in full takes four days on average. However, we appreciate that time available ashore can be limited. We are therefore able to deliver the course to suit your timescale.

For more information, please contact us.
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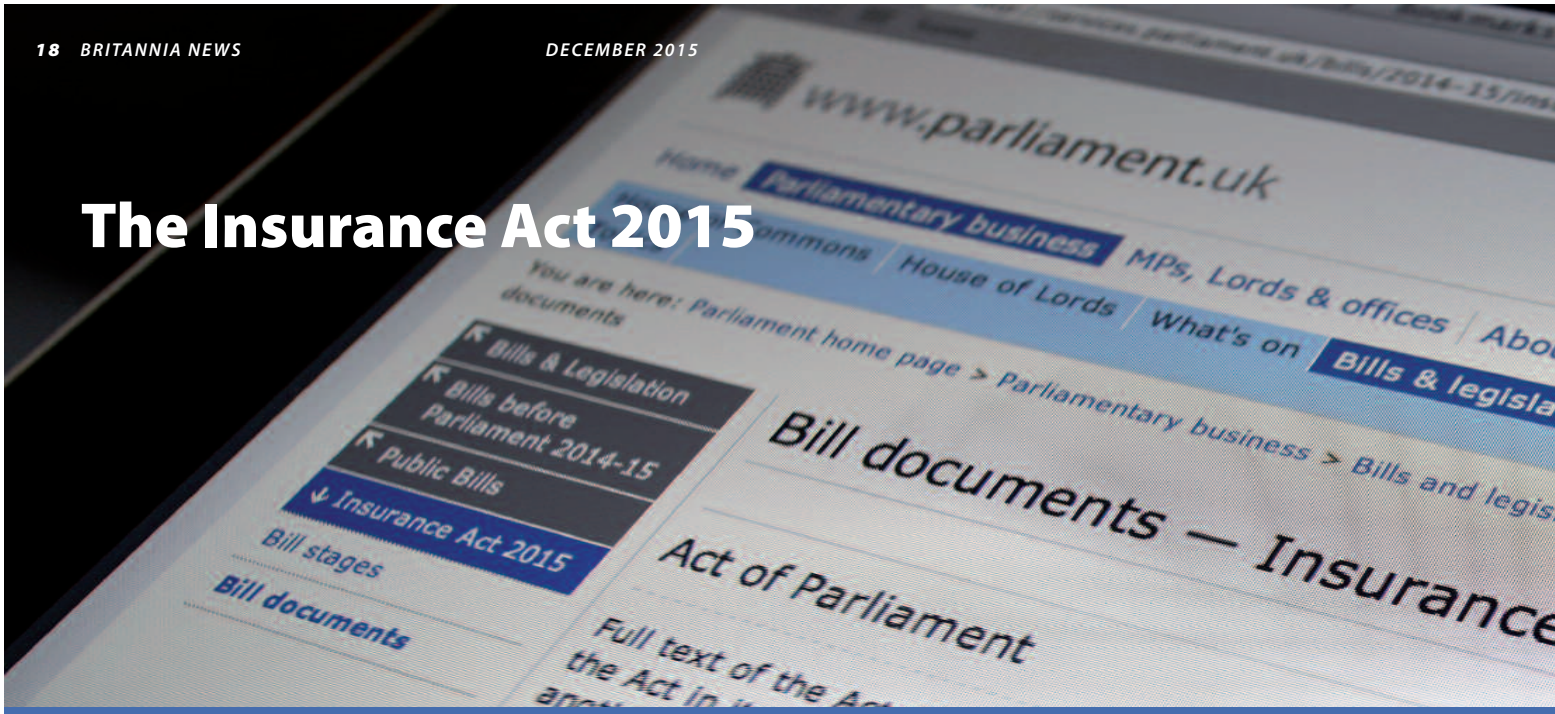
The Insurance Act 2015



The UK Insurance Act 2015 received the Royal Assent on 12 February 2015 and is scheduled to come into force on 12 August 2016. It is likely, however, that the Act will be amended (before coming into force) by a Bill currently before the UK Parliament known as the Enterprise Bill.

In this article, the UK Insurance Act 2015, as amended by the Enterprise Bill, is jointly referred to as 'the new Act'.

The new Act has wide application, amending (but not repealing) some key sections of the Marine Insurance Act 1906 (MIA). It will apply to eight of the thirteen International Group clubs (including Britannia), being those clubs whose rules are subject to English law.

The new Act applies to both consumer and non-consumer contracts. However, the primary objective of the new Act is the protection of consumers and, for that reason, Sections 15, 16 and 18 of the new Act permit insurers of non-consumer insurance contracts (which includes P&I clubs) to contract out of many of the new Act's provisions. This reflects the Law Commission's comment (when proposing the new Act) that sophisticated insurance markets, in particular in the marine insurance sector, would be expected to contract out. The eight clubs affected by the new Act have agreed a common approach to the new Act, including when it is appropriate to 'contract out'.

Section 17 of the new Act, however, requires insurers to draw 'disadvantageous terms' in an insurance contract to the attention of the (potential) insured. This means that, where an insurer has decided to contract out of a Section in the new Act, the insurer must have made that fact clear. The clubs will achieve such clarity and satisfy Section 17 by listing each Section of the new Act which has been excluded.

Key features of the new Act

As far as non-consumer insurance contracts are concerned, the new Act introduces changes to the current law in three main areas: obligations of disclosure, warranties and the treatment of fraudulent claims. The Enterprise Bill referred to above will create an implied term that an insured's claim should be paid within a reasonable time.

These areas and the clubs' reaction to the changes are as follows:

1) Disclosure obligations

Currently, under the MIA, an insured has a duty (with few exceptions) to provide all information that would be material to the risk. Should this duty be breached, the insurer is entitled to avoid the policy entirely.

Sections 3-7 of the new Act introduce the concept of an insured's obligation to make a 'fair presentation of the risk'. This requires an insured to disclose to the insurer 'every material circumstance' which the insured knows, or ought to know; or, to provide the insurer with 'sufficient' information to put a prudent insurer on notice that it needs to make further enquiries into those material circumstances.

Remedies for breach of this new 'fair presentation' obligation vary according to the circumstances. They are to be found at Section 8 of the new Act.

Where there has been a deliberate or reckless breach, the insurer may avoid the policy (as before); but, where the breach was innocent, the insurer can only avoid the policy if he can show that, but for the breach, he would never have entered into the contract at all. If, on the other hand, he agrees that he would have entered the contract, but on different terms, those different terms will be included. If he would have charged a higher premium a proportionate reduction will be made in the amount of the recovery.

The clubs believe that the 'fair presentation' provisions are appropriate in the context of a club-member relationship. However, in a mutual P&I club, proper disclosure is essential and, as both parties are sophisticated market participators, it was considered necessary to preserve the MIA remedies for breach (by contracting out of Section 8). In other words,

the club may avoid the contract of insurance where there has been a breach of the fair representation obligation, regardless of whether the breach is deliberate, reckless or innocent.

2) Warranties

Section 9 of the new Act deals with warranties and representations in non-consumer contracts. Before the new Act, many insurers used 'basis of contract clauses' to convert any statement made by a party applying for insurance into a warranty. Pursuant to Section 9, such clauses will be ineffective and it will not be possible to contract out of Section 9. Therefore the clubs will be amending their Rules to remove their basis warranty clauses.

Under the MIA, a breach of a warranty entitles the insurer to avoid all claims under the policy from the date of the breach. Sections 10-11 of the new Act are less severe: any breach of warranty by an insured merely suspends cover until the breach is remedied, and it is possible to contract out of Sections 10 and 11.

Given the mutual nature of a club, the importance of certain warranties (e.g. compliance with Class) and the fact that members can ask club Directors to exercise their discretion in appropriate cases, clubs have decided that it is appropriate to contract out of Sections 10 and 11.

3) Fraudulent claims

Section 12 of the new Act clarifies the law by providing that where an insured makes a fraudulent claim, the insurer may terminate the contract from the date of the fraudulent act, without any return of premium. Claims arising from events before the fraud would still be recoverable.

Section 13, however, refers to instances of group insurance (in the context of fraudulent claims) and the situation where an insurance contract confers benefits on third persons who are not parties to the insurance contract (i.e. associated companies or affiliates of a member who are not actually entered in the club).

Section 13 provides that where a fraudulent claim is made by a beneficiary of (but not a party to) a contract of insurance, only cover for the fraudulent beneficiary will be terminated, not the other party/parties to the contract.

Currently, the IG Pooling Agreement allows cover to be extended to affiliated/associated companies (but only up to the amount which the insured member would have been able to claim). The clubs believe that the presentation of a fraudulent claim by an associated/affiliated company should have the same impact as if it had been presented by the member (as provided under Section 12). The clubs will therefore be contracting out of Section 13.

4) Payment of claims

As mentioned above, the Enterprise Bill proposes an amendment to the new Act (Section 13A), introducing an implied term into all contracts of insurance that an insurer shall pay an insured's claim within a reasonable time. If the insurer fails to pay in a timely fashion, the insured may claim interest.

The mutual nature of cover and the way in which clubs handle their claims makes this amendment inappropriate. The clubs will therefore contract out of Section 13A to the extent to which they are permitted. Clubs will not, however, be able to avoid paying interest where the non-payment of a claim has been either deliberate or reckless.

All Sections of the new Act from which the clubs have decided to contract out will be excluded from their rules. In Britannia's case, this will involve a new Rule 3(5), entitled Insurance Act 2015.

Chadwick Weir Navegacion – Montevideo

In the year 1918, a small group of British shipowners whose ships plied the seas between Great Britain and the River Plate decided to establish agencies at Montevideo (Uruguay), Buenos Aires and Rosario (both in Argentina) in order to give a better service to their ships.

Chadwick Weir Navegacion Ltda was founded in Montevideo and commenced operations on 12 September 1918.

The premises hired for this purpose at 302 Cerrito Street, in the heart of Montevideo's shipping quarter, were shortly afterwards purchased by the company.

For nearly four decades, Chadwick Weir provided a first class service to ships of many flags calling at the port of Montevideo. Then in early 1959, the company was asked to represent most of the British-based P&I clubs as their correspondent in Uruguay. Several years later, similar appointments were made by a number of Scandinavian marine insurance companies and P&I clubs. These appointments have remained in place for almost 55 years.

In February 1973, the Montevideo Agency was purchased by a group of Uruguayan shipowners but the company's work as correspondent continued using the same experienced personnel to service shipowners and their P&I clubs. At the same time, the company set up a control department, which carried out quality controls of vehicles and cargo (including preloading surveys of fruit, meat and fish).

In 1999, a strategic decision was taken to focus more on assisting P&I clubs and their members. It was decided, therefore, to discontinue the company's agency business. Likewise, in 2002, the cargo control and cargo surveying ceased. As a result, Chadwick Weir is now exclusively dedicated to serving the shipping industry as correspondent for most P&I clubs in the International Group and for other leading marine insurers.

Chadwick Weir continues to be based in Montevideo, which is the main port in Uruguay. The Montevideo office also deals with cases arising in other ports, such as Nueva Palmira, Fray Bentos and José Ignacio, either by attending cases in person or by appointing surveyors and experts locally.

Chadwick Weir also has a representative office in Asunción, for dealing with P&I matters that might arise in any of the Paraguayan ports.

Chadwick Weir always appoints external lawyers and professional surveyors in order to ensure that any advice and reports are independent and impartial. This also gives Chadwick Weir the flexibility to ensure that lawyers and surveyors with the relevant qualifications and experience are chosen on a case by case basis depending on the nature and complexity of the case.

Chadwick Weir's staff from left to right:
Mr Juan Hudson
Ms Bettina Polo
Ms Elena Nocetti
Ms Eliana Roldán
Capt Alejandro Laborde

Quality over quantity is – and always will be – Chadwick Weir's motto.

Chadwick Weir provides a 24 hour emergency response service and follow-up analysis and advice on all aspects of P&I and Hull claims to assist the Club and its Members at every stage of a case from the initial investigation through to negotiating settlements with third parties.

Chadwick Weir's staff is led by Capt Alejandro Laborde, Ms Bettina Polo, Mr Juan Hudson, Ms Elena Nocetti and Ms Eliana Roldán.

Chadwick Weir's view on the role of the correspondent

The traditional role of the correspondent as the eyes and ears of the Club has not changed over the years. However, as the marine business, world trade and maritime law continue to develop, so the role of correspondent has also expanded to include multimodal transport, a greater focus on pollution and environmental damage cases in addition to the ever-increasing complexity of local and regional regulations, customary trade practices and international legislation.

Today, the correspondent is no longer only a single person but part of an office team. That team has to have a broad knowledge and experience in handling maritime claims, as well as developing and maintaining relationships with third parties such as local authorities, lawyers, surveyors, and of course claimants.

The workload of the correspondent is diminishing as a result of the trend towards higher deductibles and general improvements in safety. The correspondent therefore needs to continue enhancing their qualifications, knowledge and skills to maintain their role as the first point of contact for the Club and its Members.

Quality over quantity is – and always will be – Chadwick Weir's motto.

Legal system in Uruguay

Uruguay has not signed any of the international conventions for the carriage of goods by sea such as the Hague-Visby Rules, Hamburg Rules or Rotterdam Rules.

Until recently, maritime matters were governed by the Code of Commerce which was introduced in the 19th century. However, a new maritime law was introduced in September 2014. The key points addressed in the new legislation are:

• Joint surveys are mandatory if requested by any of the involved parties in any incident which might result in a cargo claim.

• Private surveys can be adduced as evidence in legal proceedings. Expert evidence can also be admitted to clarify or add to the survey reports. Foreign surveyors' reports can be admitted although, if the survey is conducted in Uruguayan territory, the assistance of a local surveyor is required.

• The time limit for pursuing marine claims has been reduced from 20 to 2 years.

• Indemnity claims against third parties, such as the shippers, stevedores or a terminal can be brought by the carriers even after the expiration of the two-year time bar but within six months from the date on which the carrier was served with proceedings or the date on which the claim was settled.

• IG clubs' LOUs are considered as adequate security for releasing a vessel from arrest. The club may however have to agree Uruguayan jurisdiction and nominate a Uruguayan domiciled company such as the local correspondent for the purpose of enforcing a Judgment or settlement against the LOU.

• A shipowner can limit liability to the value of the ship before the incident, plus equipment and freight. A request to constitute a limitation fund should be made to the Court and the equivalent sum should be deposited in Court to establish the fund.

• Other limits of liability or defences on the reverse side of bills of lading (including jurisdiction clauses) are not accepted by the local Courts unless the bill of lading contract is signed by the relevant cargo interest.

• In the absence of other relevant conventions or treaties relating to maritime law, the Treaty of Law for International Commerce Navigation (Tratado de Montevideo, 1940) will apply.

Uruguay has ratified the following conventions:

- The Collision Convention (Brussels 1910)
- The Salvage Convention (Brussels 1910)
- IMO (London 1948)
- CLC 69/Fund 71-92
- SOLAS (London 1974/1988)
- MARPOL (London 1973/1978/1997)
- SAR (Hamburg 1979)
- United Nations Convention on the Law of Sea (Montego Bay 1982)

SAPIC

With a view to capitalising on the experience, contacts and knowledge of the different local markets for the benefit of the P&I clubs and their members, Chadwick Weir together with other long-established correspondents of the region founded SAPIC (South American Protection and Indemnity Correspondents) in Montevideo in 2001. Capt Alejandro Laborde from Chadwick Weir is currently SAPIC's Spokesman. Its members comprise solely independent commercial correspondents in Latin and South America.

The objectives of SAPIC are:

1) To promote unity amongst the long-established correspondents of the region for the continuation and growth of the business of its members;

2) To promote high standards of quality in the servicing of their principals' needs, developing new services they may require, all in a cost-effective manner; and

3) To provide a means of relating to other similar associations and with the P&I clubs and other principals of its members at large.

In order to be a member of SAPIC, a firm must be listed as a commercial P&I correspondent for at least five continuous years, be independent and devoted to correspondency work.

SAPIC membership is not open to legal correspondents, Lloyd's Agents, cargo adjusters or recovery agents.

This year SAPIC held its Annual Meeting in London on 22 September and was attended by all SAPIC's members and most of the correspondents' managers.

The purpose of the meeting was to keep the clubs informed of difficulties that SAPIC members (and their clients) face in South America and to reinforce the long-standing relationships that exist with the clubs.

The meeting agreed to enhance information and education services by organising P&I seminars, where possible, for surveyors, maritime lawyers, port agents and authorities.

Alan McLean is awarded the Legion of Honour

We are very pleased to announce that one of Britannia's longest-standing Club correspondents, Alan McLean, was awarded the prestigious Legion of Honour as a Chevalier (Knight) by the President of France this year.

Previously, in 2005, Alan was made a Chevalier in the Order of Maritime Merit for services to the maritime industry.

Alan is President of the McLean Group which acts as a Britannia correspondent in the ports of Marseille, Fos-Sur-Mer, Sete and Toulon in France and in various ports in Morocco, Tunisia and New Caledonia.

Safe port warranties – *OCEAN VICTORY* revisited

We are grateful to Philip Stembridge of Stembridge Solicitors Limited for this update.

Following the article on Safe Ports contained in the December 2014 issue of *Britannia News,* we can now report that the first instance decision of Mr Justice Teare was overturned on appeal (*Gard Marine & Energy Ltd v. China National Chartering Co. Ltd v. Daiichi Chuo Kisen Kaisha* (The *'OCEAN VICTORY'*) [2015] 1 Lloyd's Law Reports p. 381).

By way of reminder, the facts were as follows:

OCEAN VICTORY, a Capesize bulk carrier, was chartered on an amended NYPE form for a 5-7 month period *'via safe berth(s), safe port(s)'.* The ship was ordered by charterers to call at Kashima, where she berthed on 20 October 2006 and commenced discharge of a cargo of iron ore. The weather started to deteriorate, with the Central Fairway (where she was berthed) exposed to Force 9 winds gusting force 10 and a prevailing swell from the Northeast. The berth was also affected by 'long waves' which caused greater ranging or surging of the ship while alongside.

There was disputed evidence on whether the charterers' representative (a local and experienced mariner) instructed the master to leave the port on 24 October, or whether he only suggested the master should exercise his discretion. The Court decided that the master had been instructed to seek shelter. Unberthing proved to be very difficult but was finally achieved. However, on leaving the Kashima Fairway, the ship was confronted with gale force winds and heavy seas, lost steerage and was set down onto the breakwater. The ship went aground and broke apart. Luckily, the crew were able to abandon the ship without loss of life.

Another Capesize ship (*ELLIDA ACE*) had been berthed close to *OCEAN VICTORY* and also suffered broken mooring lines. Having likewise received advice from the charterers' representative, she sought to leave Kashima on 24 October, got into difficulties and grounded.

The Hull insurers of *OCEAN VICTORY* ('the owners') pursued a claim of USD137.6m against the charterers for damages caused by charterers' breach of the safe port warranty in the charterparty.

At first instance, Mr Justice Teare held that the port was unsafe ('the causation issue'). He found that when the ship was ordered to sail to Kashima, there was a risk the ship might have to leave the port on account of long waves and bad weather or because she could not safely remain. Further, there was a real risk that long waves might occur at the same time as gale force conditions. Given the risk of those conditions occurring, the safe departure of a Capesize bulk carrier in gale force conditions from the North together with long waves, ordinary seamanship and navigation could not alone have ensured a safe exit from Kashima. The Court of Appeal, however, concluded that the conditions which affected Kashima on 24 October were 'abnormal' and, as such, this was not a risk for which the charterers were responsible. The combination of swell from long waves and a very severe northerly gale, when put together on this occasion, were a critical combination which was rare and an 'abnormal occurrence'. Contractually, the charterers were not responsible for events which were an 'abnormal occurrence'.

Although not strictly necessary for the Court to have expressed a view, the Court of Appeal made important comments in the context of recoverability of such losses under a demise charter (in this instance Clause 12 of the Barecon 89 form charterparty) ('the recoverability issue'). The contractual chain was as follows: A (owners) → B (demise charter to associated company) → C (China National Chartering) → D (Daiichi Chuo Kisen Kaisah). Following the incident, Gard Marine & Energy Ltd as hull insurers took an assignment of the rights of A and B and pursued the hull claim in proceedings against C. C in turn joined D to the proceedings.

It was found that where parties have taken out joint insurance or are co-assured (in this instance, A and B), this will generally mean the parties have agreed to deal with any claims through the insurance without any rights of subrogation. In short, the owners (A) and the demise charterers (B) had agreed to look to the insurers (Gard) for payment and not to each other; any right of recovery was waived and excluded. The overall effect is to deprive the safe port warranty of effect down the chain of charters. Gard (pursuing a claim on rights subrogated from A and B) had no right of recovery against C. In conclusion, owners, demise charterers and their insurers need to consider carefully whether joint insurance provisions deprive them of rights of recourse down any charter chain.

Permission to appeal to the Supreme Court is understood to have been granted in respect of both the causation issue (whether the event was the result of an 'abnormal occurrence') and the recoverability issue (the effect of clauses concerning joint insurance and possible waiver of subrogation of claims).

We will keep Members advised of developments in this important case.

The Maritime Labour Convention 2006

The Maritime Labour Convention 2006 (MLC) entered into force internationally on 20 August 2013. The MLC provides a set of comprehensive rights and protection at work for seafarers and aims to achieve minimum onboard working conditions, covering a wide range of matters, including: working hours, health and safety, accommodation and welfare.

The MLC requires owners to submit a Declaration of Maritime Labour Compliance (DMLC) to their Flag State, which must be a party to the convention. The Flag State then issues an MLC certificate, which must be posted in a prominent place, accessible to seafarers.

The MLC has come into force in two stages. The first stage required that ships flying the flags of States Parties should carry evidence of financial security to cover the costs of:

a) Repatriation (including where caused by the shipowner's insolvency); and

b) Compensation for death or long-term disability due to an occupational injury, illness or hazard.

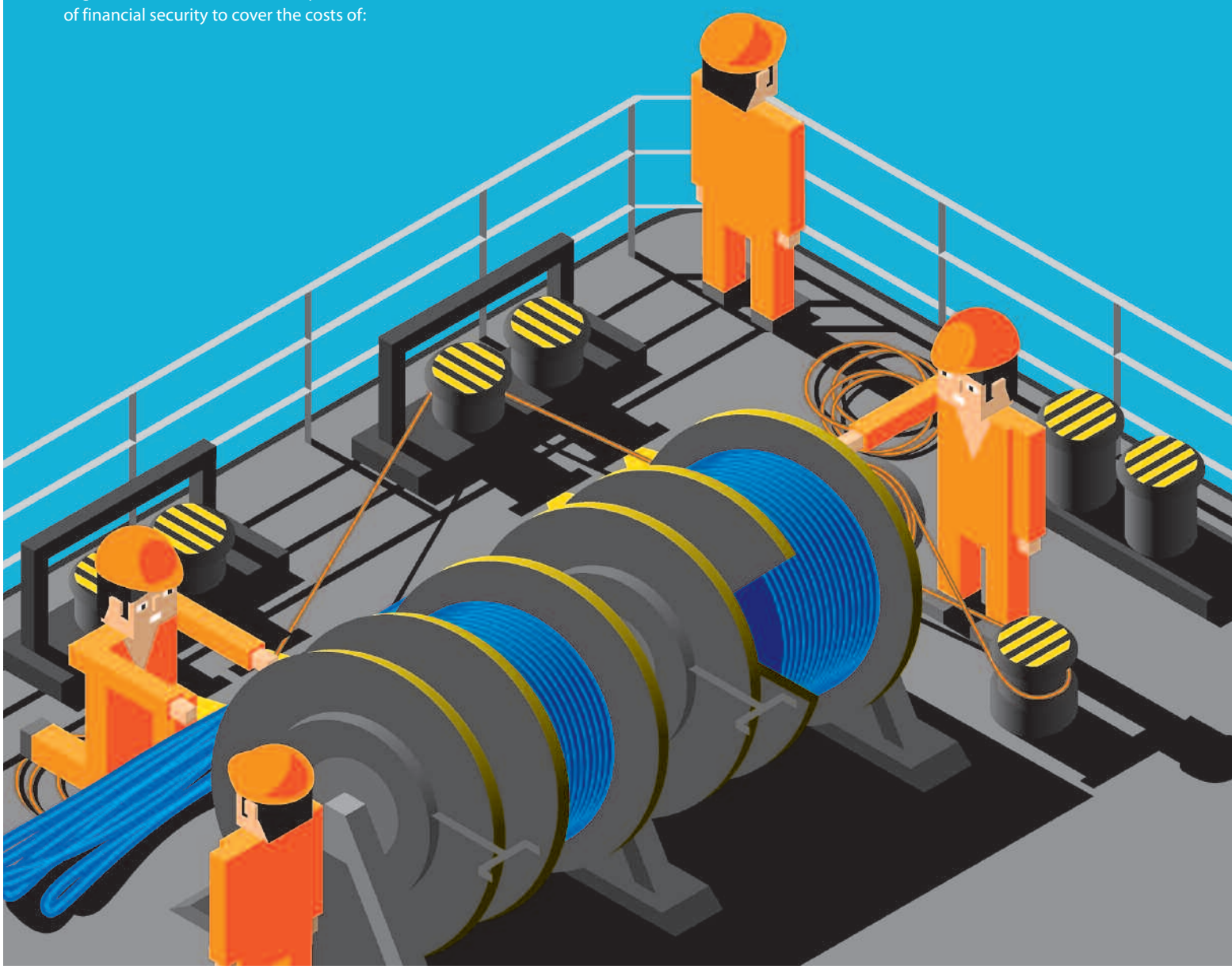
Clubs had routinely covered the above risks, with the exception of repatriation in the case of a shipowner's insolvency. The clubs therefore changed their rules two years ago so that the previously excluded risk could be covered as from 20 August 2013 (when the MLC entered into force). The risk is not poolable.

In turn, States accept a Club Certificate of Entry as providing the requisite evidence of compliance (where the member's cover includes crew risks).

The second stage of the MLC relates primarily to back wages for abandoned crew. Owners are required to provide evidence of financial security for up to four months of outstanding wages and other entitlements due under the relevant employment agreement, collective bargaining agreement or national law of the Flag State.

Back wages following abandonment have not previously been covered by the clubs, but it has now been agreed that this risk will be covered by each club within its retention (USD10m from 20 February 2016). Again, the risk will not be poolable.

Going forward, a shipowner's cover for all relevant MLC risks will be set out in a ship's Certificate of Entry rather than the club's rules.



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