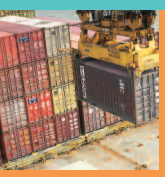
Volume 24: Number 3
August 2017

RISK WATCH

Britannia
The Britannia Steam Ship Insurance Association Limited

Personal injury



Containers and cargoes

Loss prevention

Navigation and seamanship

Legal

Crew injured by high pressure machinery

The Club has recently seen several crew injuries which were caused while cleaning, repairing or operating machinery with high pressure components.

Example 1
A fourth engineer suffered burns to his right hand and forearm while changing the gasket of the waste oil tank steam heating line. The engineer had closed the inlet and outlet valves before opening the flange but he failed to drain the hot water which proceeded to splash onto his hands and face. In this case, although the engineer was wearing protective gloves, the heat, combined with the quantity of water soaked through the protective layer of the gloves and caused his burns.

Example 2
A carpenter sustained deep cuts to his finger when he attempted to clean the nozzle of a high-pressure washer with his finger and accidentally touched the washer trigger at the same time. The crew member was wearing full safety equipment at the time of the incident but the pressure of the water was enough to cause the cuts.

Example 3
An engine cadet suffered deep cuts to his forehead while carrying out routine maintenance to the ship's main engine turbocharger. The cover flew off the grit washing container due to a build-up of pressure within the unit's valves, which were shown to be fully choked with grit and moisture. As there was no pressure gauge on the container, the attending crew were unable to find out whether the unit had been depressurised until the cover flew off. The container was also not in the vertical position at the time, therefore the trajectory of the cover was at an angle as it flew off.

Luckily the cadet was wearing his helmet at the time otherwise the incident could have killed him.

The lesson to be learned from all of the above examples is that a thorough risk assessment should always be carried out by crew undertaking tasks using high pressure equipment or during the repair/cleaning of high pressure machinery to find out what safety equipment is required for each individual task. In example 3, the risk assessment should have included the following:

- Stop!
- Think – what could go wrong?
- Ensure everyone taking part or observing is aware of the job tasks and the potential risks
- Could the container be under pressure?
- If so, remove the cover with the utmost care to one side of the cap
- Ensure that there is nobody in the immediate vicinity – look behind you!

The above examples also demonstrate the importance of ensuring appropriate safety equipment is worn at **all** times when operating or working on high pressure equipment.

The dangers may not always be immediately evident but the risk of injury is substantial and the consequences can prove fatal. It is therefore of vital importance that a thorough risk assessment is carried out, safety procedures are strictly adhered to and vigilance is demonstrated by the crew at all times.

Personal injury

Stowaways: recent cases

The Convention on Facilitation of International Maritime Traffic, 1965, as amended, which was adopted by the IMO in 2011, defines a stowaway as:

'A person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the shipowner or the master or any other responsible person and who is detected on board the ship after it has departed from a port, or in the cargo while unloading it in the port of arrival, and is reported as a stowaway by the master to the appropriate authorities.'

In recent months there has been an increase in the numbers of stowaways trying to board ships at West African ports. Recent incidents include:

Example 1
The ship completed cargo operations and proceeded out to the port anchorage. A shore boat coming alongside reported that there were stowaways in the rudder trunk. It is thought that the stowaways got on board before the ship cleared the breakwater, at a time when no crew were likely to be present on the aft deck.

Three stowaways were found and repatriated ashore by immigration authorities, however the ship was still fined for having stowaways on board.

Example 2
The ship completed cargo operations and the usual stowaway checks were carried out. No stowaways were found on board. As the ship was leaving the port area, a passing ferry boat reported that stowaways were seen entering the rudder trunk.

Local agents were contacted and assisted the master in disembarking 10 stowaways. The ship was fined by the immigration authorities.

The ship is responsible for ensuring that all persons coming on board are properly documented and permitted to be on board for a legitimate reason. However, it can be hard to see who might be a potential stowaway, as they often wear the same type of clothes as stevedores or other shore personnel, making it hard to detect and to challenge the stowaways. It is recommended that, where possible, the identities of those boarding the vessel are checked at the bottom of the gangway (i.e. before they step foot on board) and that a thorough pre-departure stowaway search is carried out.

In addition to these so-called 'professional' stowaways, there are reports of a number of local companies and individuals who assist potential stowaways to gain access to the ports and ships. Often a small gratuity to a shore watchman is all that it takes to allow unauthorised people to access the ship.

It is harder to detect stowaways who have boarded the ship by the rudder trunk, and this is when the assistance of a shore/pilot boat, or an observant and friendly passing ferry is often essential.

It is advisable that stowaways are removed and landed from the ship as soon as possible, but even where this is possible, the fines and expenses can be quite significant.

Seafarers and Members are reminded that any stowaways found on board a ship must be treated in accordance with the IMO guidelines. It is important to avoid any situation arising which could result in the crewmembers being charged with any criminal wrongdoing or negligence.

The importance of wearing a hard hat

In previous editions of *Risk Watch* and *Health Watch* we have talked about the importance of wearing the correct personal protective equipment (PPE).

Of all the types of PPE, a hard hat is the most important and a recent case handled by the Club shows what could have happened if a hard hat had not been worn.

On 22 January 2017 the second officer was adjusting the chain and lock of a valve when he was struck in the back by a wave that entered the manifold.

He was washed against the stairs and suffered a head injury. The impact was so severe that the hard hat he was wearing was seriously dented.

Luckily only a brief deviation was required before the second officer could be evacuated by helicopter for emergency treatment. Examinations showed that he had suffered a traumatic brain injury and a laceration of his frontal scalp. Fortunately the injury proved not to be too serious and he was given the all clear to fly the next day.

Without the hard hat, the outcome might have been far worse and so the message is clear – always make sure that you are wearing the correct PPE.

Heat damaged soyabeans – problems with carriage to China

Britannia Members have received several claims in recent years relating to heat damaged soyabean cargo carried to Chinese ports.

Claims of this nature can be relatively expensive because of the high value of a soyabean cargo. A review of the claims encountered gives some practical pointers for consideration by the crew.

What's the problem?
There are two main problems encountered, both of which relate to pre-shipment quality of soyabean cargo:

i) Soyabeans loaded at a temperature over 30°C, with moisture content over 11.5% for voyages over 20 days are at a high risk of self-heating and associated damage.

ii) Soyabeans may suffer heat damage or blackening prior to loading. Shippers may seek to mitigate by mixing this with sound cargo. There is usually a tolerance in any cargo for off-spec or discoloured cargo, but it may be difficult to determine on a visual inspection that cargo has, for example, less than 1% blackened beans (on spec) rather than 3% (off spec).

Poor ventilation during the voyage is often blamed for the damage arising. However, if there is sweat damage due to lack of ventilation, this is likely to affect only the top layer of cargo in the stow. Where damage is spread more evenly throughout the stow, this points to a problem with the quality of cargo itself. However, Chinese courts may not accept this position, so precautions should be taken in advance if possible.

What precautions can be taken to avoid problems?

Before loading
• Extra care should be exercised by crew when loading soyabeans in South America or USA for carriage to China, in particular, after a rainy period, and where delivery will be between August and October.

• Members should request a certificate of quality from the shippers prior to loading, if possible. This should set out figures for the moisture content, foreign material, heat damaged kernels, total damaged kernels and split kernels.

• If the shipper cannot provide a certificate, confirmation of the moisture content should be requested in writing.

• Where there is any apparent risk of high moisture content or pre-existing damage , or where a problem is actually observed, it may be advisable to take joint samples of cargo with shippers at the loadport to ascertain the average moisture content and temperature of the cargo. Samples can be retained for analysis later in the event of a claim arising.

During loading
• Check cargo thoroughly throughout loading as different quality cargo may be presented during this process. Pay particular attention to any apparent moist, blackened or caked kernels.

• Take care during loading to close hatchcovers rapidly in the event of rain and to record any such activity properly in both logbooks and statements of facts.

• Cargo temperature and apparent condition should be checked and recorded whenever operations permit, for example during pauses in loading operations and in particular during any longer delays that happen.

During voyage
• Full ventilation records should be maintained throughout the voyage. These should take into account the 'three degree rule', which states that: ventilation can take place at any time when the outside air temperature is at least 3 degrees cooler than the cargo temperature on loading. They should record cargo temperature, air temperature and accurate ventilation settings during both day and night.

• During the voyage, hatchcover drain valves should be checked for any condensation which may indicate self-heating. Any condensation should be recorded.

• During the voyage, wherever possible, the condition and temperature of the cargo should also be checked, always taking into account safety and operational restrictions.

During discharge
• As with loading, if there is any rainfall during discharge, this should be recorded and hatchcovers closed quickly.

• In the event that a problem with cargo condition is observed, Members should contact the Club, who will arrange for a surveyor and any other experts to assist.

If the master or crew are in any doubt, they should not hesitate to contact the Club, via local Correspondents, who can provide guidance as may be required.

Loss prevention

Loss prevention seminars

The Club's loss prevention department has been travelling around the world to continue with its series of technical seminars.

The seminars have been very well received and the format is constantly being updated and adapted to meet the needs of our Members. The loss prevention team have taken part in a number of public seminars and also in our Members' own officer seminars, visiting and presenting at Members offices, which has been particularly popular in south east Asia.

Technical seminars aimed at seafaring officers and superintendents have been held in Wuhan, Szczecin, Taipei and Manila. These seminars highlight the importance of effective risk assessments with an emphasis on safety awareness. Recent topics covered in the seminars have included:

• navigation errors and resource management, with a reminder of the principles of safe working procedures and practices on board;

• cargo related matters, particularly relating to dangerous goods; and

• other general areas of concern in the maritime industry, including MARPOL violations and entry into enclosed spaces.

The loss prevention team have also developed an interactive game which is sometimes used in the seminars. In these scenarios, volunteers from the audience take part in role play which highlights the need for good risk assessments on board. These role play sessions are light hearted and fun but do have a very serious point to make as effective risk assessments can prevent serious injury and fatal accidents.

Another aspect of the loss prevention team's seminar initiative is the use of film to add an extra dimension to the presentations. The team have created two short film scenarios. One deals with bridge resource management and is called 'Navigation – Back to Basics'. The other highlights the potential problems associated with the use of ECDIS and is called 'ECDIS – an accident waiting to happen'. The films were produced in a full mission ship simulator with the loss prevention team playing the various roles.

The 'Back to Basics' film was based on several incidents on various types of ship, which were combined into a single scenario based on a container ship. This type of ship was used as we have noted a steady number of incidents where container ships have made contact with the quay and, in some cases, have damaged the container cranes.

The ECDIS film was based on a single incident and taken from a UK Marine Accident Investigation Branch (MAIB) Report. The film is designed to demonstrate the incorrect use of ECDIS and also draws attention to the fact that there is a great variety of different ECDIS models on the market, which are operated in many different ways, with changes to the operation and the menu.

The technical seminars are aimed at seafarers and superintendents as these are the people who implement their company's organisational policies. However, we are aware that seafarers' efforts to manage and promote safety on board their ships are defined and potentially restricted by their Managers' own safety culture and training. In order to try to address this, the loss prevention team have adapted their seminar programme to include seminars aimed at the actual decision makers within the Members' company. These include the senior management and the designated person ashore (DPA). So far these DPA seminars have been presented in Singapore, Mumbai, Chennai, Hong Kong, Kobe and Tokyo.

The theme of the recent DPA seminars has been 'Safety Culture and Risk Assessments' and participants have been asked to consider their seafarers' understanding and interpretation of the company's safety culture, leading to discussions about how risk assessments can be made more effective and also considering the legal responsibilities of DPAs and senior management in respect of their obligations under the ISM Code.

The team have also started using electronic voting devices to obtain feedback from the audiences at the seminars. This feedback has shown that the senior management's perception of training, safe working practices and safety culture may not always be realistic. For example, around 8% of the 240 attendees indicated that safety culture is included in their SMS and therefore does not need to be specifically addressed with the crew. The conclusions and findings from the seminars will be circulated to Members in the form of articles in Club publications and will be discussed at these events in the future.

Piracy: recent attacks indicate a resurgent threat to shipping

On 12 June the Combined Maritime Forces (CMF), a multi-national naval partnership tasked with preventing piracy in international waters, released a statement confirming that its naval presence in the Gulf of Aden will increase.

Full details of the statement can be found via the following link:

www.goo.gl/pwG1vD

The CMF response follows several recent attacks on commercial shipping in the region summarised below:

• On 16 May the Indian navy investigated reports of two dhows and eight skiffs being used for piracy activities in the Gulf of Aden. Three skiffs escaped at high speed, however the remaining ships were searched and weapons and ammunition confiscated.

• On 31 May a tanker was fired upon in the Bab al-Mandab Strait. The tanker was damaged in the attack. The onboard security team returned fire and the pirates moved away. Reports suggest one of the attacking skiffs unexpectedly exploded during the attack. The motive behind the use of explosives by the attackers is not yet clear.

• On 1 June another tanker was fired upon by six armed pirates in the Gulf of Oman. The onboard security team fired warning shots and the pursuing skiffs moved away.

The above acts as a timely reminder that pirates continue to pose a threat to ships in the Gulf of Aden. Ships transiting high risk areas should continue to implement Best Management Practices 4 (BMP4), full details of which can be found on the Britannia Piracy Focus page at the following link:

www.goo.gl/4yh2fn

Legal

The UK Supreme Court reconfirms law on safe port warranties in charterparties The *OCEAN VICTORY*

In May 2017 the UK Supreme Court issued its judgment in the *OCEAN VICTORY* and thereby concluded several years of litigation in the English courts as to the meaning of a safe port warranty in a charterparty. The dispute arose out of the loss of a bulk carrier at Kashima port, Japan in October 2006 in a severe gale.

Summary

The Supreme Court upheld the 2015 decision of the Court of Appeal which had found that Kashima was a safe port at the time when time charterers had given voyage orders for the ship to proceed there to discharge its cargo. As a result, the time charterers had complied with the safe port warranty under the time charterparty and therefore were not held responsible for the subsequent loss of the ship and cargo when the ship was at Kashima.

The Supreme Court also upheld the Court of Appeal's judgment on the separate issue of the effect of a co-insurance requirement under the BARECON form of bareboat charterparty. The result was that the registered owners and bareboat charterers of the ship, as joint co-assureds under the ship's hull & machinery insurance policy, could not claim an indemnity from the time charterers for the loss of the ship. The liability of the bareboat charterers towards the registered owners for the loss was extinguished by payment of the proceeds of the H&M insurance policy so that the bareboat charterers and their subrogated insurers had no claim to make against the time charterers.

Finally, the Supreme Court also reconfirmed that under the Convention on Limitation of Liability for Maritime Claims 1976 charterers cannot limit their liability towards the owners for loss of or damage to the chartered ship by reference to the tonnage of the chartered ship.

The facts

OCEAN VICTORY was a bulk carrier owned by a registered owner and bareboat chartered to an associated company on a BARECON 89 standard bareboat charter form. Standard clause 12 of the form (now clause 13 in BARECON 2001) required the bareboat charterer to insure themselves and the Owners jointly for hull risks.

The bareboat charterer re-let the ship on time charter to a third party. In September 2006 the time charterers ordered the ship to load a cargo of iron ore in South Africa and discharge at Kashima port, Japan. The ship arrived at the Raw Materials Quay at Kashima in October 2006 and on 24 October the ship began to lose its moorings under the effect of long waves and a severe gale. The ship tried to depart to seek shelter but grounded in the Kashima port fairway and became a total loss.

The hull insurers paid the registered owners circa USD70 million for the loss of the ship and the insurers took an assignment of the rights of the owners and bareboat charterers. The bareboat charterparty and the time charterparty both contained safe port warranties. The subrogated insurers brought a claim against the time charterers for alleged breach of the safe port warranty and claimed the insurance proceeds paid for the loss of the ship as damages.

To defend the claim the time charterers argued that Kashima was a safe port and that the loss had arisen as a result of an abnormal occurrence; and also sought to defend the claim by arguing that the bareboat charterers were not liable towards the registered owners to the extent that the loss claimed was covered by the hull insurance taken out jointly by the registered owner and bareboat charterer.

The judgment

Charterparty safe port warranties

Under English law a port is safe if the particular ship can reach it, use it and return from it without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship.

The date for judging breach of the safe port warranty is the date of nomination of the port. A safe port warranty is not a continuing warranty. The warranty is a prediction about safety when the ship arrives in the future and assumes normality at the port; given all of the characteristics, features, systems and a state of affairs which are normal at the port, at the particular time when the ship should arrive. The question is whether the port is prospectively safe for this particular ship. If the answer is 'yes, unless there is an abnormal occurrence' then the safe port warranty is complied with.

When the case first came before a judge of the Commercial Court in 2013, the judge decided that Kashima port was not a safe port because the two weather phenomena of long waves, and a very severe northern gale, were common characteristics of the port, notwithstanding that the judge found that simultaneous occurrence of both of these two phenomenon, which had caused the casualty, was a rare event and had never apparently occurred in the previous 35 years.

The Charterers appealed and at the appeal in January 2015, the three judges of the Court of Appeal said that the judge should have considered whether the simultaneous occurrence ('critical combination') of long waves and a severe northerly gale made it dangerous for the ship to remain at the berth, but unable to safely leave, was an abnormal event, or a normal characteristic of the port.

The Supreme Court agreed with the 'critical combination' test and said that an abnormal event was something well removed from the normal. It was out of the ordinary course and unexpected. It was something which the charterer would not have in mind. Was the danger rare and unexpected, or was it something which was normal for the particular port for the particular ship's visit at the particular time of the year?

The evidence presented to the courts was that no ship in the port's history had been dangerously trapped by long waves at the Raw Materials Quay, with a risk of damage or mooring break out, at the same time as the Kashima Channel was not navigable because of gale force winds.

The Court of Appeal, upheld unanimously by the five judges of the Supreme Court, concluded that the 'critical combination' of both long wave and severe northerly gales at Kashima was historically found to be a such a rare event that it was an 'abnormal occurrence', and so the Charterers were not in breach of the safe port warranty.

Co-insurance of registered owner and bareboat charterer of hull risks

The decision that Kashima was a safe port meant that it was not necessary for the Court of Appeal or the Supreme Court to consider the co-insurance defence raised by the time charterers. Nonetheless, for completeness, the Court of Appeal decided that the co-insurance clause in the BARECON form of bareboat charterparty was a complete code for the treatment of insured losses as between the registered owner and bareboat charterers in the event of a total loss of the ship. Such that, even if the bareboat charterers had been in breach of the safe port obligation in the charter, they were under no liability to the registered owners because the owners had agreed to look to the insurance proceeds rather than to the bareboat charterers for compensation.

The logical consequence was that the bareboat charterers suffered no loss as a result of any breach of the safe port warranty and in turn the time charterers had no liability to the demise charterers. The time charterers could thus escape liability for the loss of the ship on the technicality of an agreement between the owners and the bareboat charterers with which they had nothing to do.

The Supreme Court upheld this decision by a majority however two dissenting judges argued persuasively that the co-insurance clause only deals with the mechanics of payment of the insurance proceeds and not the substantive rights of the parties and therefore the co-insurance clause ought not to exclude a right to claim damages for breach of contract.

Limitation of liability

On the issue of limitation, the Supreme Court judges were unanimously of the view (in the theoretical scenario that if charterers had been in breach of the safe port warranty and held liable) that the ordinary meaning of Article 2(1)(a) of the Convention on Limitation of Liability for Maritime Claims 1976 ('claims in respect of loss of life or personal injury or loss of or damage to property…occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom')does not extend a right to limit a claim for damage to the ship by reference to the tonnage of which limitation is to be calculated. Therefore the charterers would not have been able to claim a limit of liability for the loss of *OCEAN VICTORY* by reference to its tonnage.

Conclusion

In relation to limitation of liability under the 1976 Convention the Supreme Court reconfirmed previous case law that charterers cannot limit their liability for damage to or loss of the chartered ship by reference to the tonnage of that ship.

On the other hand the decision of the Supreme Court on the effect of co-insurance of owners and charterers under a charterparty is not yet settled because of the dissenting judgments of the Supreme Court judges. We understand that BIMCO are currently working on an updated version of BARECON which will include a response to this issue. Pending adoption of the new version, charterers should take legal advice on whether to amend the BARECON form to protect the owners' right to claim against the bareboat charterers for an insured loss.

In relation to safe port warranties the upholding by the Supreme Court of the decision of the Court of Appeal is welcome from a charterers' perspective, because the initial decision of the Commercial Court had a draconian result in the case of a modern, purpose built port which nobody previously had thought to be unsafe.

In summary, owners bear the risk of loss caused by a danger which is avoidable by ordinary good navigation and seamanship by their master and crew. Charterers are responsible for loss caused by a danger which is predictable as normal for the particular ship at the particular time when the ship is anticipated to be at the nominated port and such danger is not avoidable by good seamanship. Owners and ultimately their hull insurers are responsible for loss caused by a danger due to abnormal occurrence.

Liability for cargo damage caused in consequence of charterers' orders to delay

A time charterer should think carefully about ordering a ship to wait outside a discharge port for a long period of time when the charterparty incorporates the Inter-Club Agreement 1996 (the ICA).

According to a recent decision of the High Court in The Yangtze Xing Hua [Transgrain Shipping (Singapore) Pte Ltd v Yangtze Navigation (Hong Kong) Co Ltd [2016] EWHC 3132 (Comm)] such an order may be considered an 'act' within the meaning of clause 8(d) of the ICA. This means that if cargo damage occurs as a result of such an order, the ICA will allocate liability for any cargo claim 100% to charterers.

Factual background

As they had not been paid for the cargo, the charterers ordered the ship to wait off the discharge port for more than 4 months. When the ship finally discharged the cargo in May 2013, cargo damage was discovered. A cargo claim was made against the ship. That claim was settled and the owners then brought a recourse action against charterers under the terms of the time charterparty.

It was common ground that liability (as between owners and charterers) for the cargo claim was to be apportioned in accordance with clause 8(d) of the ICA which had been incorporated into the charter.

Clause 8(d) provides that:
a) liability for all other cargo claims whatsoever are to be apportioned between owners and charterers 50/50;

b) but if there is clear and irrefutable evidence that the cargo claim arose out of the 'act or neglect' of one or the other, then that party shall bear 100% of the claim.

The decision

An arbitration tribunal held that the charterers' decision to keep the ship at the discharge port anchorage for a prolonged period of time was an 'act' falling within clause 8(d) of the ICA and so liability for the cargo claim would be apportioned 100% to charterers.

The charterers appealed. The question of law for the court to decide was whether the term 'act' in clause 8(d) meant a culpable act in the sense of fault or whether it meant any act, whether culpable or not. In the court's judgment, the word 'act' in clause 8(d) would reasonably be understood to bear its ordinary and natural meaning of any act without regard to questions of fault. In consequence, the court ruled that the tribunal's construction of 'act' in clause 8(d) was correct and dismissed the charterers' appeal.

It is understood that there is an appeal pending against the judgment.

We are grateful to William Stansfield from Thomas Cooper LLP for assistance with this article.

Tindall Riley (Britannia) Limited
Regis House
45 King William Street
London EC4R 9AN

Tel +44 (0)20 7407 3588
Fax +44 (0)20 7403 3942
www.britanniapandi.com

RISK WATCH is published by The Britannia Steam Ship Insurance Association Limited, and can be found at www.britanniapandi.com/publications/risk-watch/

Legal

Responsibility for cargo handling operations

In November 2012 *Risk Watch* published an article summarising the responsibilities of stow planners where a charterparty clause transfers risk and responsibility for stowage of cargo upon the charterers. This is common commercial practice, as seen for example in clause 8 of the NYPE 1946 time charter form and clause 5(a) of the Gencon 1994 voyage charter form, which transfer responsibility for stowage to charterers. Even if the master prepares or approves of the stowage plan, the charterers will likely remain responsible for loss or damage caused by improper stowage, unless there is a significant intervention by the shipowners or the master. Two more recent cases are of useful guidance on this topic.

Stowage of steel coils

A cargo of steel coils was shipped from China to Russia under a Congenbill 1994 on terms that incorporated the Hague Rules and also a Gencon 1994 charterparty which was incorporated into the bill of lading by the standard Congenbill reverse wording 'All terms and conditions, liberties and exceptions of the Charter Party…are herewith incorporated'.

Clause 5 of the Gencon charterparty provided that 'The cargo shall be brought into the holds, stowed and/or trimmed, tallied, lashed and/or secured by the Charterers, free of any risk, liability and expense whatsoever to the Owners'.

The master and chief mate prepared a stowage plan for steel coils which proved to be inadequate, because the plan omitted the locking coils to secure the cargo. Local stevedores, who were employed by the charterers, stowed the cargo without any locking coils, however there was no evidence that the stevedores had abided by the master's stowage plan. The master allowed the ship to sail despite expressing concern after completion of loading about the lack of locking coils. The ship experienced adverse weather during the voyage causing it to roll moderately to heavily. The cargo stow shifted and coils were damaged. The cargo interests brought a claim in the High Court against the shipowners for failure to properly and carefully load, stow, carry and care for the cargo. The Court found that the cargo shifting and the resulting damage was caused by the absence of locking coils. The stowage was improper because it was inadequate to meet the foreseeable weather conditions during the voyage. The Court decided that the shipowners were not responsible for the improper stowage because responsibility for stowage was transferred to the charterers and to cargo interests under clause 5 of the Gencon charterparty, which, the Court concluded, was incorporated into the bill of lading. Nor was there any significant intervention by the master or shipowners in the stowage because the evidence indicated that the stevedores, who were employed by the charterers, had not abided by the master's stowage plan but had stowed the cargo according to their own plan.

This case demonstrates that, where the charterers are responsible for stowage, they must be attentive to stowing and securing cargo in accordance with the cargo securing manual. Even if a stowage plan is prepared by the shipowners/master it must be carefully reviewed by the charterers and their employed stevedores.
The 'EEMS SOLAR' [2013] 2 Lloyd's Rep 487

Carriage of rice in bags

A cargo of rice in bags were carried from Pakistan to the Ivory coast. The Hague Rules and the Synacomex 90 form of charterparty were incorporated into the bills of lading.

Clause 5 of the Synacomex charterparty form provided that 'Cargo shall be loaded, trimmed and/or stowed at the expense and risk of Shippers/Charterers at the average rate of 1,500 metric tons per weather working day…Cargo shall be discharged at the expenses and risk of Receivers/Charterers at the average rate of 1,500 metric tons per weather working day…Stowage shall be under Master's direction and responsibility'.

The cargo interests brought claims against the shipowners for bags torn during loading, carriage or discharge and for short delivery. The shipowners accepted that they were responsible for stowage under the master's responsibility provisions of Synacomex clause 5, however the shipowners argued that the words 'expense and risk of Shippers/Charterers and 'Receivers/Charterers' meant that responsibility for loading and discharge was transferred to the cargo interests or charterers, and that, therefore, to the extent that damage to the bags of rice was caused by bad loading or discharge (as opposed to bad stowage) that would be the responsibility of cargo interests. The High Court agreed with the shipowners that the words 'expense and risk' of the cargo interests or charterers in Synacomex clause 5 did indeed have the effect of transferring responsibility for loading and discharging to the charterers and cargo interests, and therefore the shipowners were not responsible for cargo damage to the extent caused by bad loading and discharge of the cargo.

This case demonstrates that charterparty provisions as to 'expense and risk' of cargo operations such as loading, stowage and discharge can transfer responsibility away from the shipowners to the charterers or cargo interests for such cargo operations.
The 'SEA MIRROR' [2015] 2 Lloyds Rep 395

Editor's message We are always looking for ways to maintain and increase the usefulness, relevance and general interest of the articles within Risk Watch. Please forward any comments to: **rwatched@triley.co.uk**