RISK WATCH

FEBRUARY 2018

PEOPLE RISKS MEET THE TEAM NAVIGATION & SEAMANSHIP VENEZUELA: CREWS NEED TO WATCH OUT THE HISTORY OF BRITANNIA AND CLUB NEWS REGULATORY ITOPF CLUB MEMBERSHIP LEGAL CYBERSECURITY AND NYPE INTER-CLUB AGREEMENT



A MESSAGE FROM THE EDITOR





Britannia has a long tradition (163 years to be exact) of caring for its Members and their crew. In the current climate where schedules are tight and shoreleave can be difficult to obtain, it is important that you look after your mental and physical heath to stay safe on board. Organisations such as Sailors' Society are there to help and we encourage all our crew to look at the Wellness at Sea app which we are pleased to sponsor. Details can be found on the opposite page.

Following on from our re-brand last autumn, it seems like a good time to look back into Britannia's past. Our new logo includes the important words 'Trusted since 1855' and on page 4 we look back over 163 years since Peter Tindall and John Riley started the first protection and indemnity (P&I) club which was to become The Britannia Steam Ship Insurance Association Limited. We are very proud of our history, traditions and values and will continue to provide a world class service with an integrated 21st century approach.

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CLAIRE MYATT Editor



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

MEET THE PEOPLE RISKS TEAM

THE PEOPLE RISKS DEPARTMENT HANDLES ALL CREW, THIRD PARTY, PASSENGER AND STOWAWAY CLAIMS. WITH THESE CLAIMS ACCOUNTING FOR 28% OF THE TOTAL NUMBER OF THE CLUB'S CLAIMS AND 39% OF CLAIMS LESS THAN USD1 MILLION IN VALUE, IT IS VERY IMPORTANT TO HAVE A STRONG TEAM IN PLACE. BRITANNIA IS VERY LUCKY TO HAVE AN EXCELLENT GROUP OF PEOPLE, WITH MANY YEARS' EXPERIENCE, WHO ARE READY TO ASSIST MEMBERS WITH ANY CLAIMS AND ALSO WITH ADVICE ON ALL ASPECTS OF PEOPLE RISKS.



ELLA HAGELL is a Divisional Director. After qualifying as a solicitor in 1992 she spent the following years working for leading maritime law firms, including 14 years based in Piraeus, Greece. She joined Tindall Riley when she returned to England in 2008 and gained experience in all aspects of P&I and FD&D cover. Since 2014 she has been head of the Personal Injury (now People Risks) Department and she represents the Club on the International Group Personal Injury Sub-Committee.



ILKA BECK is a Fleet Manager. She joined the People Risks team in 2014 from another International Group P&I Club. She has more than 8 years of experience in handling all people-related P&I claims. After her move from Berlin to London at the end of 2005, Ilka worked at two law firms where she handled personal injury and other claims. In total Ilka has more than 18 years of experience in insurance claims handling. Ilka is a qualified solicitor in England and Wales and is also a qualified lawyer in Germany (Rechtsanwältin). She represents the Club on the International Group Occupational Disease Sub-Committee.



ANNE CASEY is a Fleet Manager. She joined Tindall Riley in 1983 and gained experience in various departments before joining the then Personal Injury Department in 1990. Anne handles all types of claims in the People Risks team. Over the years she has gained considerable experience in handling stowaway cases, which has become one of her particular areas of expertise along with crew claims.



GILLIAN LAM is a Claims Manager. Having completed her Master's degree in Shipping, Trade and Finance in London, Gillian moved to Hong Kong to work for a shipowner in the insurance and claims department where she handled hull and machinery, cargo and crew claims. In 2014 she moved back to London and joined Tindall Riley. Gillian mainly handles crew illness and injury matters as well as stowaway cases. She is a native speaker of Cantonese and can converse in Mandarin and is currently studying to be a solicitor in her spare time.



JAN LEAVER is a Claims Manager. Before joining Tindall Riley in March 2012, Jan worked for two claims and recovery agents in the UK, handling claims for cargo underwriters. He was also involved in monitoring and supervising Lloyd's Agents worldwide. He joined the People Risks team in April 2017, having previously worked for 5 years in the Club's Scandinavian and Taiwanese teams, where he handled cargo and property damage claims.



WELLNESS AT SEA APP

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

For more information visit: www.sailors-society.org







CLUB NEWS

EUROPEAN AND ASIAN FORUMS

These regional Forums demonstrate the Club's strategy of providing Members with a local personalised service, backed by a global presence in the market.

THE EUROPEAN FORUM was held in Lagonissi, near Athens. The Forum, now in its 21st year, was attended by 52 Members from across Europe and underlined the Club's commitment to remaining accessible while providing Members with a personalised service. It coincided with the announcement that Britannia will be opening an office in Greece in 2018.

'Holding the European Forum in Greece was important given that it is the home to many of the world's major shipowners, a number of whom are Britannia Members. Opening a Britannia office in Greece will mean that we can enhance the personalised service to those and future Greek Members,' said Andrew Cutler, CEO of Britannia and the Managers.

Dale Hammond (Director, FD&D and claims director for the Club's Greek membership) and Simon Williams (Director, Underwriting and who has underwriting oversight for the Club's Greek membership) will oversee arrangements for establishing the office.



MEMBERS' REPRESENTATIVE COMMITTEE (MRC) AND THE BOARD This October the MRC and the Britannia Board met in Vancouver. It was announced that for 2018/19 there would be no P&I General Increase to the Club's advance call and that there would be no General Increase for 2018/19 to its advance call on FD&D.

A further USD10M capital distribution was also announced to P&I mutual Members based on premium for ships on risk at midnight BST 17 October 2017.

THE ASIAN FORUM was held in Hong Kong and outlined Britannia's strategy. This has included the Club strengthening its presence in the region, with its Managers having recently taken over its longstanding Japanese Exclusive Correspondent, (renamed Tindall Riley (Britannia) Japan Ltd) with offices in both Tokyo and Kobe. More announcements will follow in the coming months involving the Club's initiatives in Hong Kong and Singapore.

'The Asian Members' Forum is an important event given that half of our membership is based in the region. Enhancing our personalised service to Members by having dedicated Britannia owned local offices in key territories is vital,' said Andrew Cutler.

BBQS ON BOARD

HAVING A BARBEQUE (BBQ) ON BOARD IS A POPULAR SOCIAL ACTIVITY AND IS EASY TO ORGANISE. THE CREW CAN WORK TOGETHER TO SET UP THE CHAIRS AND TABLES AND ALSO TO PREPARE THE BBQ. THE END RESULT IS A DELICIOUS MEAL.

BUT, as with any fire, it is very important to remember that the crew are dealing with potentially dangerous situations as well as flammable substances.

As an example of how a simple BBQ can go tragically wrong, we would like to share the facts of a recent case from one of our Members:

• a BBQ for the whole crew was scheduled for the evening

- fire extinguishers were nearby, a water hose was connected to a hydrant near the BBQ and there were also buckets of water close by
- two ABs were tasked with getting the fire started
 there were two containers of paint thinner ready to use to help light the BBQ, one large (18 litres) and one small

AND THIS IS WHERE IT STARTED TO GO WRONG.







When the ABs came to light the BBQ, the thinner was poured from the large container into the small one and then sticks with cloth wrapped around the top were soaked with thinner and used to wet the coal. According to reports, the containers of thinner were some distance away from the BBQ, but somehow one of the ABs was not careful and both the containers ignited/exploded causing severe burns to 80% of his body. The other AB suffered minor burns.

The ship deviated to disembark the ABs. Both were hospitalised and while the one with minor burns was discharged quickly, the other AB who suffered the serious burns sadly died several days later as a result of medical complications.

This tragic case shows that it is not enough to follow safety protocol in terms of firefighting precautions. Having buckets of water, fire extinguishers and hoses on hand did not prevent the accident – it was the actual method of lighting the fire that caused it.

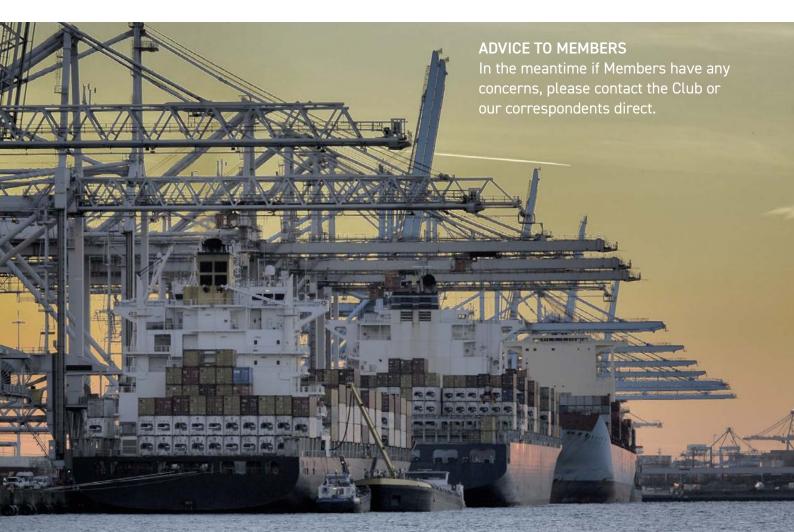
VENEZUELA: CREWS NEED TO WATCH OUT

VENEZUELA IS CURRENTLY FACING HYPER-INFLATION AND A SHORTAGE OF US DOLLARS, MAKING THESE CHALLENGING ECONOMIC TIMES FOR MANY PEOPLE. THERE IS EVIDENCE TO SUGGEST THIS MAY BE ENCOURAGING THIRD PARTIES TO PLANT DRUGS ON BOARD SHIPS TO JUSTIFY LEVYING FINES, TO SMUGGLE DRUGS FROM THE COUNTRY, OR TO STOW AWAY ON THE SHIP.

> The Club has been made aware of recent cases involving drugs being discovered on ships calling at Puerto La Cruz. The drugs were discovered during inspections by the National Guard in common areas of the ships. They were believed to have been placed there by third parties coming on board at the port, in order to then demand fines be paid.

There have been various incidents in the past involving drugs being attached to ship's hulls. Diving inspections are now mandatory at some ports in Venezuela prior to ships sailing, in order to prevent smuggling. There are now reports of the divers appointed to carry out these inspections demanding cash payments to avoid false allegations that the ship has been or will be used for drug smuggling. There have also been cases of stowaways coming on board. Most recently, a stowaway boarded a ship at La Guaira and was found dead on arrival at the next port.

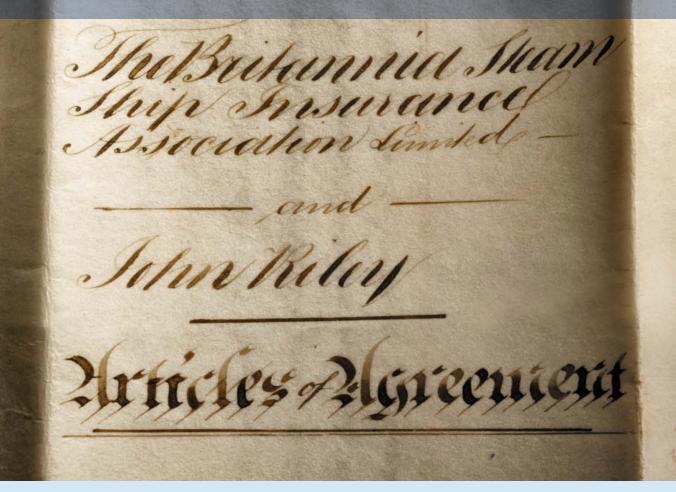
We would recommend all ships calling in Venezuelan ports exercise vigilance in relation to third parties boarding the ship. The crew should closely monitor all people coming onboard and restrict access to essential areas. The movements of third parties, including officials, should likewise be monitored. Private security companies are able to offer surveillance for ships while berthed. Our local correspondents Globalpandi S.A. are able to assist shipowners with these issues and provide further practical guidance if required.



THE HISTORY OF BRITANNIA

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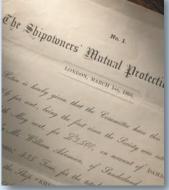


THE CLUB BEGAN ITS LIFE IN 1855. AT THAT TIME THE WORLD LOOKED VERY DIFFERENT - FRANCE AND ENGLAND WERE AT WAR WITH RUSSIA IN THE CRIMEA, THE EXPLORER DAVID LIVINGSTONE BECAME THE FIRST EUROPEAN TO SEE VICTORIA FALLS AND THE FIRST PRINT OF THE DAILY TELEGRAPH ROLLED OFF THE PRESS. NEITHER THE SUEZ CANAL NOR THE CUTTY SARK HAD YET BEEN BUILT.

BLOCKLEY BRITISH ISLES MARCH LIST OF SHIPS The London Clubs. PETER TINDALL, RILEY & Co., Ship und Insurunte Brobers. 17. GRACECHURCH STREET. Blockley's British Isles March – a

'descriptive piece introducing...admired national melodies'.

The Club's 1865 Rule Book



On 1 May 1855, Peter Tindall, Riley & Co started the management of The Shipowners' Mutual Protection Society



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THE FIRST PROTECTION AND INDEMNITY CLUB WAS STARTED BY PETER TINDALL, RILEY & CO. IT WAS RUN BY JOHN RILEY, THE YOUNGEST OF FOURTEEN CHILDREN OF A FARMING FAMILY FROM THE EAST RIDING OF YORKSHIRE, AND HIS COUSIN PETER TINDALL, WHO CAME FROM A FAMILY OF SHIPOWNERS AND BROKERS.



Peter Tindall, Riley and Co's first office at 17 Gracechurch Street

The initial protection club may have covered only sailing ships, but in 1871 Peter Tindall, Riley & Co became managers of a club exclusively for iron steamships. It was at this point that the name 'Britannia' emerged, a name borrowed from the classical figure adopted as a national symbol in the early eighteenth century. Given that Britannia carried in her right hand a trident and was therefore the mistress of the sea, as well as the personification of the nation, she must have seemed a natural choice for the Rileys seeking a new name for their protection Club.

In the 1860s, the running of the Club was very different. Tindall Riley & Co had offices not only in London, but also in Sunderland. Britannia's Committee had seven Directors, all of whom were British shipowners. The earliest surviving minutes of their meetings date from 1911, and even then they consisted of only a single handwritten sheet of paper.

TIMELINE



1855 Establishment of The Shipowners' Mutual Protection Society by Peter Tindall and John Riley



1870 The Shipowners' Mutual Protection Society pays its first loss of life claim



1871 The Club is renamed 'The Britannia Steam Ship Insurance Association Limited'



1876 Britannia is incorporated as a company limited by guarantee



1899 First cost-sharing Pool between six P&I Clubs, including Britannia



1901 Anglo-American Oil (later ExxonMobil) becomes a Member of Britannia



By 1876 Britannia was writing three Classes of insurance which included hull and machinery risks (Class 1) and Freight risks (Class 2). Protection risks were known, as they still are today, as Class 3. Legislation passed in the mid-nineteenth century prompted shipowners to realise that they faced potentially huge liabilities following death resulting from negligence. This led to an expansion of the scope of the terms of the insurance, with Britannia paying its first loss of life claim in 1870.

Another example of this trend was the concern that the advent of steamships would give rise to a greater number of, and more serious, collisions as a result of the inexperience of those operating the new vessels. Hull underwriters responded by restricting cover to three fourths of the risk, which led the Clubs to offer protection for the remaining one fourth. Contemporaneously, as a clear separation developed between cargo and shipowning interests, there came greater calls from the latter for indemnity (cargo) cover, especially when the Courts began to issue judgments providing that shipowners could not always rely on the exceptions to liability in their bills of lading. That trend was to continue in a different guise in 1899, when Britannia joined with five other Clubs in entering a Pooling Agreement to share claims in excess of GBP10,000.

When Peter Tindall died in 1857, John Riley continued for most of the century, retiring only in 1898. His nephew, EJ Riley, had joined the company in 1876. In 1974 R T Riley became a Director of the Managers having been nominated by a Canadian shipowner. He was directly related to the earlier Managers, but this was purely coincidence. The name of the Managers continues of course to carry the Riley name today.

Fast forward to 2017 and Britannia has continued to expand, with the focus remaining to provide its Members with the finest P&I and FD&D cover.



MEMBERSHIP OF

WE TAKE THIS OPPORTUNITY TO REMIND MEMBERS THAT SHIPS ENTERED WITH THE CLUB ARE ALSO AUTOMATICALLY MEMBERS (TANKERS) OR ASSOCIATE MEMBERS (NON-TANKERS) OF THE INTERNATIONAL TANKER OWNERS POLLUTION FEDERATION (ITOPF). ITOPF IS THERE TO HELP IN THE EVENT OF A POLLUTION INCIDENT.



ITOPF was created nearly 50 years ago in order to provide specialist services to the oil tanker industry. This has now evolved into assisting all types of ships. Responding to shipsource spills of oil, chemicals and other hazardous substances is ITOPF's priority service. This is provided worldwide, 24 hours a day, 365 days of the year.

This is normally performed, without charge, except for expenses, at the request of the ship's P&I Club or owner.

ITOPF's role on site varies according to the circumstances of

the incident, but it is always advisory and based on a consistent scientific approach. This normally includes one or more of the following activities:

 advising all parties on the potential fate and effects of the oil, chemicals and other hazardous substances investigating damage to the marine environment and fisheries

• advising on methods to mitigate environmental and economic losses, including restoration options

The aim is to reach agreement with all stakeholders on measures which are technically justified and best suited to the particular circumstances. This helps ensure that the clean-up is as effective as possible and that damage is minimised. It also means that subsequent claims for compensation can be dealt with promptly and amicably.

ITOPF RESPONDS TO SPILLS OF ANY SIZE IN ANY LOCATION – NO SPILL IS TOO SMALL. EVEN IN THE MOST STRAIGHTFORWARD CLEAN UP CASES, A CALL TO ITOPF SHOULD BE CONSIDERED AS THEIR INPUT OR INFLUENCE CAN BE BENEFICIAL IN ENSURING BEST PRACTICE IN A RESPONSE AND CAN ALSO LIMIT THE COST. ITOPF ALSO PROVIDE TECHNICAL GUIDANCE AND INFORMATION ON THEIR WEBSITE AS WELL AS ARRANGING FOR EDUCATION AND PLANNING FOR ALL TYPES OF POLLUTION RELATED OPERATIONS.

• advising and assisting all parties on the most appropriate clean-up techniques, with the aim of mitigating any damage

 helping to source equipment and assisting in organising the clean-up in cases where the shipowner is required to mount the response operation

• undertaking surveys, monitoring the clean-up and advising all parties on the technical merit of response actions

For more information visit: www.itopf.com To contact ITOPF in an emergency, please call by telephone: +44 (0)20 7566 6999 (office hours) or +44 (0) 7623984606 (out of hours).

Alternatively, please contact the Managers.

CYBERSECURITY AND ELECTRONIC RELEASE SYSTEMS

ALTHOUGH THERE IS AN INCREASED AWARENESS OF CYBER RISKS IN THE MARITIME INDUSTRY, RELATIVELY FEW CASES INVOLVING CYBERSECURITY IN THE CONTEXT OF SHIPPING HAVE BEEN CONSIDERED BY THE ENGLISH COURTS TO DATE. THIS IS ONE REASON WHY THE RECENTLY REPORTED CASE OF GLENCORE v MSC HAS ATTRACTED INTEREST.

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The case concerned a cargo misdelivery claim arising as a result of the delivery of cargo by the ocean carrier under an electronic release system operating at Antwerp, where cargo is released by way of utilising PIN codes instead of delivery orders. The PIN codes were computer generated and sent to the consignee by email upon surrender of the bill of lading, but the carrier's terms of carriage provided for delivery of the cargo against delivery orders. In the English High Court the carrier was held liable for delivering the cargo to an unauthorised party who had intercepted the PIN codes. The judgment of the High Court was discussed in the April 2016 edition of Claims & Legal.

www.britanniapandi.com/publication/riskwatch-claims-legal-april-2017/

The carrier appealed but in May 2017 the Court of Appeal rendered judgment dismissing that appeal. At the High Court hearing it had been thought that the PIN codes might have been intercepted by hacking of the carrier's computer network. However, the High Court did not make any specific findings in this regard.

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At the appeal hearing additional evidence was presented by the carrier which indicated that the PIN codes might have been intercepted by the hacking of the computer networks of the consignee and its agents in Antwerp. However, regardless of that possibility, the Court of Appeal said that because the terms of the carrier's bill of lading stipulated that delivery of the cargo was to be made against delivery orders but the carrier had not issued them, the carrier's decision to deliver the cargo against the PIN codes was at its risk. Accordingly, even if the PIN codes had been intercepted from the consignee's or its agents' computer network, that would not relieve the carrier of its responsibility for misdelivering the cargo.

The Court of Appeal's judgment indicates that the carrier will bear the risk of loss or damage to cargo caused by a cyberattack on an electronic release system unless the carrier's contractual terms of carriage expressly authorise delivery under an electronic release system, including terms dealing with the potential cyber risks involved. The case also illustrates the need for contractual documents to be reviewed regularly so as to keep up to date with changes in cyber technology such as the use of electronic release systems.

NYPE INTER-CLUB AGREEMENT (ICA) CLAIMS

CLAIMS UNDER THE NYPE INTER-CLUB AGREEMENT, WHILST MEANT TO BE STRAIGHTFORWARD, CAN OFTEN BECOME COMPLICATED AND EXPENSIVE. *LONDON ARBITRATION 30/16* IS A GOOD ILLUSTRATION OF THE DISPUTES THAT CAN ARISE IN PRACTICE.



THE SHIP WAS ARRESTED WHILST DISCHARGING SOYABEANS IN THE MIDDLE EAST. THE ARREST WAS FOR A USD1 MILLION CLAIM BY THE RECEIVERS FOR CAKING DAMAGE TO THE CARGO. THE OWNERS BECAME CAUGHT UP IN THE PROCEEDINGS. THE LOCAL COURT EVENTUALLY HELD THE CHARTERERS LIABLE FOR THE CLAIM ON THE BASIS THAT THE CARGO WAS OF AN INFERIOR QUALITY.

The owners commenced London arbitration to claim their paid legal/expert costs under the ICA, given that clause 3 allows the recovery of 'legal, Club correspondents' and experts' costs reasonably incurred in the defence of [the receivers' claim]', in the context of 'damage to cargo'.

The Tribunal held that:

1 The receivers had not, as the charterers had argued, claimed under a foreign law concept similar to 'bailment' (under which the owner must return the cargo in the same physical condition in which it is received). Their claim had been brought under the bill of lading, i.e. a 'contract of carriage' as required by clause 4 of the ICA.

2 The legal/expert costs were recoverable even though the receivers' claim had failed. Charterers' argument that they were not recoverable was uncommercial; it could not be right that e.g. settling the claim at 10% allowed the legal/expert costs to be recovered whereas defeating it did not. And clause 3's reference to costs *'reasonably incurred in the defence'* envisaged that the receivers' claim might fail. So a claim could be made for legal/expert costs incurred in successfully defending a cargo claim by the receiver.

3 Whilst the Tribunal was not bound by the local court's factual findings and could consider the evidence afresh, it was clear that the cargo was unstable/unable to withstand the voyage, it self-

heated and it produced the caking/ship's sweat/condensation. So there was 'clear and *irrefutable evidence*' that the cargo claim arose out of an 'act' by the charterers, for which they were 100% liable, under clause 8(d) of the ICA in (1) ordering and carrying out loading (for which they were responsible under the charterparty) which gave rise to the subsequent arrest/claim; and/or (2) shipping cargo with a propensity to self-heat (i.e. a non-permissible cargo under the charterparty) and thereby running the risk of delay/an arrest which the owners had not agreed to bear under the charterparty. (See also The Yantze Xing Hua [2016] EWHC 3132 with regards to a similar scenario constituting an 'act' by the charterers under clause 8(d).)

4 Finally, had the ICA not applied (which in this case it did), owners could have alternatively recovered the legal/technical costs under the clause 8 implied indemnity.

Whilst this seems a sensible decision, it also shows how ICA claims can be complicated in practice – the very opposite of what the ICA seeks to achieve.

We are grateful to Evangelos Catsambas from Ince & Co for providing this useful article. T: +30 210 4551000 M: +30 6944 455 644 E: evangelos.catsambas@incelaw.com







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