

# RISK WATCH

OCTOBER 2023

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# A MESSAGE FROM THE EDITOR

Welcome to the final issue of Risk Watch for the year 2023. In this edition, we continue our spotlight on our global offices, with a special feature on our team in Japan. With offices in Tokyo and Kobe, we now have 26 employees dedicated to serving our Members in Japan.

Our loss prevention team examines common themes within pilotage related claims and shares guidance on effective bridge resource management. Additionally, the team provides information on the safe execution of underwater hull cleaning and diving operations.

Internationally the sea fishing sector remains as one of the most challenging and hazardous industries to work in, suffering high rates of fatal and serious accidents. In light of our own Club incident data from 2017 to 2022 showing that 96% of all claims on fishing vessels are crew related, we have prepared advice on preventative measures to avert serious accidents.

Turning our focus to the Seafarers Hospital Society's 'On Course for a Culture of Care' report, we highlight the need for an increased emphasis on the health and wellbeing of seafarers. We offer advice to shipowners on improving crew welfare on board vessels.

We conclude with our regular legal updates, shedding light on key legal cases and why the decisions have significant relevance to our Members and their businesses.

Thank you for your continued support, and we look forward to bringing you more insightful content in the coming year.

**Jessie Dunn**  
Editor



**We hope you enjoy this copy of Risk Watch.** We will be looking for ways to maintain and increase the usefulness, relevance and general interest of the articles. If you have any ideas or comments please send them to: [britanniacommunications@tindallriley.com](mailto:britanniacommunications@tindallriley.com)

Evolving from the Britannia Group's Exclusive Correspondent in Japan, our Japan offices have a deep-rooted connection with the Club and its Members. The Britannia Group's presence in Japan dates back to 1953 through its local exclusive correspondents, Cornes & Co. Ltd, based in Yokohama and Kobe. In 1989 Britannia Europe Japan, which was formerly known as Britannia Japan branch, was granted the first overseas P&I Club business license in Japan. This milestone marked the beginning of the Britannia Group's journey to provide exceptional insurance services to its Members in Japan.

The Britannia Group continues to have a strong relationship with the Japanese shipping community and Japanese Members account for approximately 16% of Britannia's entered owned tonnage which highlights the strong relationship between the Britannia Group and the Japanese maritime industry.

In March 2023 the Britannia Group moved into a new office in Tokyo to ensure the team continues to provide Members with an exceptional service.



# THE BRITANNIA GROUP IN JAPAN 日本

TR(B)J / BRITANNIA EUROPE JAPAN BRANCH

**THE BRITANNIA GROUP OFFICIALLY OPENED ITS OFFICE IN JAPAN IN 2017 AND CURRENTLY HAS A TEAM OF 26 PROFESSIONALS BASED IN BOTH TOKYO AND KOBE WHO ARE DEDICATED TO PROVIDING EXCEPTIONAL SERVICE TO OUR JAPANESE MEMBERS.**

The Japan office supports the local community through social responsibility activities and in May this year team members participated in a charity race organised by Mission to Seafarers in Izu, Shizuoka Prefecture, raising approximately USD 7,500. Such initiatives demonstrate the Britannia Group's commitment to making a positive impact in the local community.





Above: The Japan team celebrating their office move in 2023 alongside David Cave from the Hong Kong office and Jacob Damgaard from the Singapore office.



# MEET OUR TEAM IN JAPAN 日本

ONE OF THE STRENGTHS OF OUR TEAM IN OUR JAPAN OFFICES IS THAT MANY OF THE STAFF MEMBERS HAVE SPENT A CONSIDERABLE AMOUNT OF TIME WORKING CLOSELY WITH OUR JAPANESE MEMBERS. THIS ALLOWS THEM TO PROVIDE VALUABLE ADVICE AND A SERVICE TAILORED TO INDIVIDUAL MEMBERS' NEEDS.

THE JAPANESE MARKET AND MEMBERS REMAIN VITAL TO THE BRITANNIA GROUP AND THE TEAM IN JAPAN ARE COMMITTED TO PROVIDING EXCEPTIONAL SERVICE AND SUPPORT TO MEMBERS IN JAPAN.





**MITSUHIKO IDA** With over four decades of experience within the industry, Ida, Representative of Britannia Europe Japan Branch, brings a wealth of knowledge and expertise to the team. He understands the Japanese market well and effectively manages operations and business development.



**TAKASHI SUGIYAMA** With 30 years of valuable knowledge and insights, Sugiyama, President of TRBJ, has been an integral part of our success and the service we provide to Japanese Members. His extensive experience allows him to provide valuable guidance and support to the Japan team.



**FUMIMASA KANEKO** With a career spanning over 20 years, Kaneko as fleet manager has provided exceptional leadership to the Kobe office, fostering a strong bond of trust with team members. He handles P&I claims and provides support for FD&D claims.



**MATTHEW MADIGAN** Matthew joined TRBJ on secondment from London in April as a fleet manager. As an expert claims handler, he has quickly become a key member of the team.



**YUSHIN SON** Son has given over 25 years of service to the Britannia Group, making significant contributions to growing the Japanese membership as an underwriter based in Tokyo.



**YOSUKE HIROTA** Hirota joined us from another P&I Club and his underwriting knowledge and experience has become a valuable asset to the Kobe office.



**MIYAKO OUCHI** With a career spanning 30 years based in our Kobe office, Ouchi as fleet manager has primarily focused on personal injury claims but has also provided comprehensive support across a wide range of tasks.



**SHIGERU FUJIOKA** With his previous experience as a surveyor, Fujioka, provides essential support to the Kobe office as a fleet manager, handling claims for Members.



**TETSUYA ODA** Oda is a fleet manager and team leader based in Tokyo, who primarily handles claims related to dry bulk cargo and various casualty claims.



**RIE NAKAYAMA** Nakayama moved from an automobile shipping company ten years ago and as fleet manager specialises in handling claims involving PCC vessels.

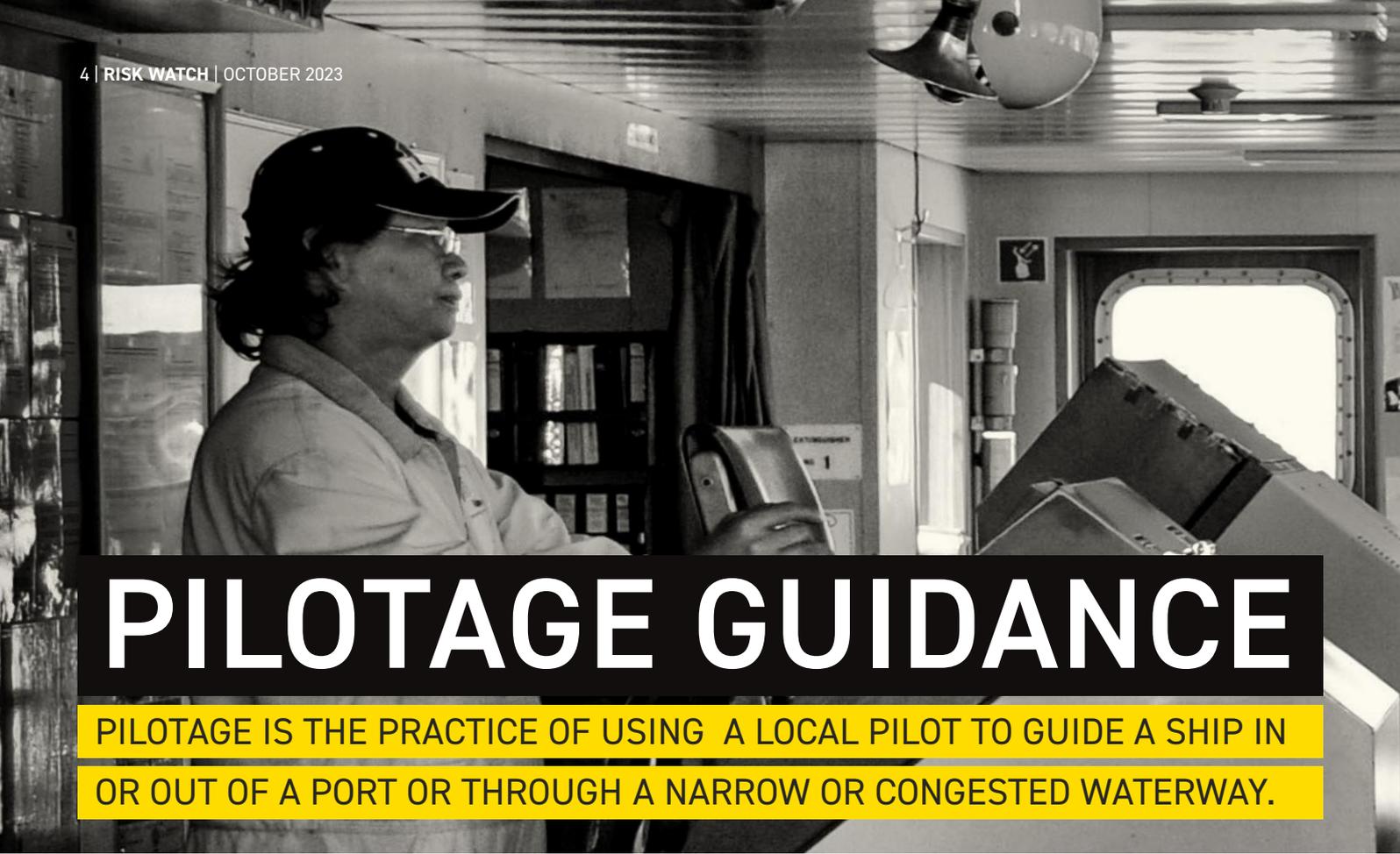


**NANAKO HIBI** Hibi is an expert in personal injury claims and in her role as fleet manager actively supports the Club and its Members.



**NAOKI MATSUDA** Although Matsuda only joined as a fleet manager in June this year, his previous experience of handling operational matters for one of the world's largest container shipping companies brings valuable insights to the team.

Other claims staff members are **Yusuke Inoue** who mainly deals with correspondent work with non Japanese Members and **Yoshimitsu Hanashiro, Fumiya Taniguchi, Seiya Okada, Yumi Miyamura, Mamia Kawamura, Jun Ling** (Kobe) and **Miwa Nishikawa** (Kobe) all of whom provide exceptional services to Japanese Members. Administrative staff include **Susumu Saito, Yukari Kobayashi, Rika Ishii, Hiroshi Ebine, Satsuki Tomiie** (Kobe) and **Toshiki Akaike**, and they are dedicated to supporting day-to-day operations.



# PILOTAGE GUIDANCE

PILOTAGE IS THE PRACTICE OF USING A LOCAL PILOT TO GUIDE A SHIP IN OR OUT OF A PORT OR THROUGH A NARROW OR CONGESTED WATERWAY.

PILOTS ARE FAMILIAR WITH THE LOCAL WATERS AND CAN HELP TO ENSURE THE SAFE PASSAGE OF SHIPS. HOWEVER, PILOTAGE CAN ALSO BE A HIGH-RISK ACTIVITY AND THE CLUB CONTINUES TO SEE INCIDENTS INVOLVING SHIPS UNDER PILOTAGE. THESE INCIDENTS HAVE HIGHLIGHTED THE IMPORTANCE OF EFFECTIVE BRIDGE RESOURCE MANAGEMENT (BRM) DURING PILOTAGE.

BRM IS A SYSTEMATIC APPROACH TO MANAGING THE RESOURCES AVAILABLE ON THE BRIDGE, INCLUDING THE MASTER, PILOT AND OTHER BRIDGE TEAM MEMBERS. IT INVOLVES ESTABLISHING CLEAR ROLES AND RESPONSIBILITIES, COMMUNICATING EFFECTIVELY AND REGULARLY TRAINING CREW MEMBERS. EFFECTIVE BRM CAN HELP TO PREVENT INCIDENTS DURING PILOTAGE BY ENSURING THAT EVERYONE ON THE BRIDGE IS WORKING TOGETHER TO GUARANTEE THE SAFE PASSAGE OF THE SHIP.

This article extends the Club's previous guidance covering Ship Pilotage and Intervention. In this article a case study is analysed to further highlight common themes within pilotage related claims.



**Jacob Damgaard**

Divisional Director, Loss Prevention Singapore  
jdamgaard@tindallriley.com

## CASE STUDY

The master received information from the pilot regarding the planned berthing procedure, which included a 180-degree turn to port side. Two tugboats were positioned on the starboard side of the ship, forward and aft. Before initiating the turn, the pilot informed the master that he believed the tugboats currently in use were underpowered for the intended manoeuvre. As a result, the pilot decided to rely on the main engine and rudder to assist with the turn.

The master then issued a command to turn the helm hard port. However, since the main engine was stopped, the ship did not respond to the helm. To compensate for this, the order was given to move forward at a slow speed while requesting the tugboats to apply maximum force in pushing the ship. Unfortunately, shortly after implementing these measures, the master observed the distance between the vessel and the jetty diminishing rapidly, indicating a high risk of collision. Consequently, the master ordered the ship to move in full astern and instructed the crew to drop the port side anchor. Regrettably, despite these actions, the vessel was unable to avoid making contact with the jetty.

## CONTRIBUTORY FACTORS AND LESSONS LEARNED

### Master-pilot Exchange (MPX)

It was apparent that an effective MPX had not been conducted. Carrying out an MPX under time pressure may lead to insufficient information exchange and, in extreme cases, situations where various sections of the pilot card and the MPX checklist are not discussed and merely ticked to show compliance. A timely challenge from the master should assist in discussing the plan in sufficient detail and provide the opportunity to consider the risks and contingencies. In the case study, given the pilot's consideration that the tugs were underpowered for the turn, more effective planning should have taken place. A slower approach speed should have been used, especially because of the narrow and short approaching distance to the berth.



### Ineffective Intervention

The master also failed to challenge the pilot's plan in the case study. The most common reason why individuals refrain from a safety intervention is related to personal concerns that the intervention may result in a defensive or angry reaction. Intervention may be a difficult skill to learn and personnel may require mentoring in this respect. It is recommended that masters and other bridge team members receive such mentoring and the practice of challenging colleagues is embedded through training and navigational assessments.

### Contingency Planning

Decisions taken without considering all available alternatives or operational limitations may turn out to be sub-optimal. This risk could be mitigated by an effective risk assessment and contingency plan. These would also support effective decision making while on passage and the outcome should be integrated into the MPX. In the case study, the underpowered tugs meant that there was little room for error when conducting the turn. Contingency planning is vital to avoid decisions being made under excessive time pressure and without adequate consideration.

### Detecting Insufficient Situational Awareness

While not applicable to the above incident, enhanced situational awareness can often be the difference between an incident occurring or not. Appropriate communication and rehearsed escalation practices should assist in detecting and addressing inadequate situational awareness.

The master of a ship has the right and duty to intervene if they believe that the actions of a pilot could endanger the safety of the ship. However, there are a number of difficulties that can make intervention challenging, such as the pilot being the most experienced person on the bridge and the master not feeling confident enough to intervene. Despite these difficulties, it is important for masters to be prepared to intervene, or challenge the pilot in a timely manner.

This can be done by training masters and bridge team members on the importance of intervention and when to intervene, providing sufficient company support and through embedding an effective safety culture.



The Club has created a poster to be used on board ships to help share the guidance. We have sent the poster out with this issue of Risk Watch. If you require additional copies please contact us via email: [britanniacommunications@tindallriley.com](mailto:britanniacommunications@tindallriley.com)

# FISHING VESSEL CLAIMS 2017 – 2022



**INTERNATIONALLY THE SEA FISHING SECTOR IS RECOGNISED AS ONE OF THE MOST CHALLENGING AND HAZARDOUS INDUSTRIES TO WORK IN, SUFFERING HIGHER RATES OF FATAL AND SERIOUS ACCIDENTS WHEN COMPARED TO OTHER INDUSTRIES, SUCH AS CONSTRUCTION AND AGRICULTURE. CLUB INCIDENT DATA FROM 2017 TO 2022 SHOWED THAT 96% OF ALL CLAIMS ON FISHING VESSELS WERE CREW RELATED, WITH 46% OF THESE CLAIMS OCCURRING AS A RESULT OF PERSONAL INJURY.**

**The most common injuries among the Club's fishing vessel Membership are crew injuries related to manual handling and these are also the second most costly, as shown in figure 1.**

Incidents varied from musculoskeletal injuries to the back because of poor manual handling techniques to injuries sustained while handling fishing nets. Crew members involved in manual handling tasks should be trained to use the correct techniques, and mechanised handling wherever possible. Further considerations for reducing the risk of manual handling incidents include conducting a toolbox talk prior to carrying out lifting operations and providing training on the correct selection of equipment and its use. Other considerations include splitting the load, sharing the load with other crew members and improving the workplace layout to reduce the amount of lifting, so that less repetitive movements are needed.

## **OPERATING MACHINERY**

When crew members are operating long line winches and equipment they should not wear loose fitting clothing or wet weather gear that could get entangled in the lines and hooks. Emergency stop systems located in the proximity of the

winch controls may be implemented to try and mitigate this issue. Effective training for the crew operating the winches and line haulers is also important. The same applies to the operating of fish processing and filleting equipment in the factory.

## **SLIPS, TRIPS AND FALLS**

Slips, trips and falls have the highest incident total cost, with leg injuries as the result of a fall the most common and most expensive injury. Fishing vessel operators can reduce the number of slips, trips and falls on board by implementing several key procedures. Firstly they should ensure that deck surfaces are kept as clear as possible from any obstructions, such as fishing gear, ropes and tools. All deck levels should also be adequately lit so that any hazards can be easily identified. Changes in deck heights, access coamings and stairs/steps should be highlighted with high visibility paint or chevron type tape so that they are visible. This can be a common issue on fishing vessels, especially on the trawl or working deck areas. Non-slip coatings, duckboards, gratings or rubber mats should be used as appropriate, as unprotected decks can present a particular risk, especially when ice or fish guts may be present. Furthermore, adequate handrails and

other forms of support should also be in place to reduce the risk of falling while moving around the vessel. Crew should be encouraged to hold on to railings where possible while moving around the vessel. This extends to ensuring that hatchways are closed when not in use. The Club has experienced a number of incidents where crew members have fallen down open hatches. Open fish hold hatchways should be protected with portable or temporary railings/stanchions and wires while offloading, with crew keeping clear of suspended loads during discharge of the catch.

## **PPE**

Personal Protective Equipment (PPE) should be provided for all crew members by encouraging safe practices, operators can further minimise the risk of slips, trips and falls. Crew members should also be aware of any company procedures relating to working on deck in heavy weather, particularly when shipping seas, and this includes the PPE required for different activities.

## **SAFETY PROCEDURES**

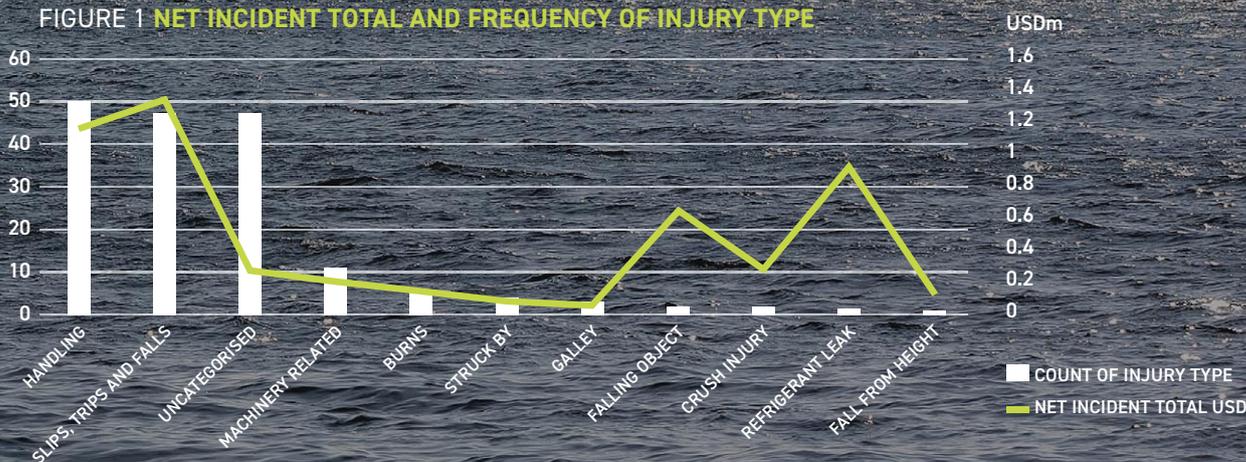
Fishing vessel operators should ensure that all crew members are aware of the established safety procedures and that they are adhered to when working with machinery or in the engine room.



**Charles Cooper**

Loss Prevention Manager, London  
ccooper@tindalriley.com

**FIGURE 1 NET INCIDENT TOTAL AND FREQUENCY OF INJURY TYPE**



All machinery should be regularly maintained, ideally as part of a preventative maintenance programme, in line with the manufacturer's recommended maintenance regime and any necessary repairs, such as oil and filter changes, should be conducted promptly. All potential risks posed from working in the engine room, as well as with machinery, should be assessed regularly and documented in a risk assessment.

Alongside the risk assessment, certain tasks within the engine room may require a permit-to-work to be completed. There should also be procedures in place for mechanical and electrical lock outs, as well as hot work and enclosed space entry. Belts, rotating shafts and couplings and hot surfaces within the engine room should be properly guarded. Burns and injuries sustained after body parts have been caught in machinery are commonplace among the Club's fishing vessel fleet. The provision of these guards includes belt drives that may be located beneath floor plates. Operators should also ensure all crew members are aware of the necessity to keep the engine room and bilges clean, with bilge level alarms operational and regularly tested. This can help provide early detection of leaks

of water, fuel and oil before they develop further. Additionally operators should ensure proper ventilation is provided in the engine room and that any fumes emitted from the machinery are adequately extracted. Finally, if crew members are working in the engine room alone, they should inform someone of how long they intend to be working in the space.

#### REFRIGERATION LEAKS

Incidents as a result of refrigeration leaks are not a frequent occurrence on board fishing vessels. However, when they do occur they have the potential to cause severe harm to health due to their asphyxiating nature. If the correct refrigeration system maintenance procedures are not followed, it can lead to refrigeration burns. The pipework and fittings of the refrigeration system should be clearly marked. A maintenance plan needs to be in place to check and record the condition of the system at regular intervals, with perishable components within the system changed in accordance with the manufacturer's requirements. Maintenance should only be conducted by authorised personnel. The maintenance plan should also include periodical tests of emergency trips and remote shutdowns of the refrigeration system. Any repairs

conducted on the refrigeration plant should be done when the system is fully disabled and locked out via a tagout system. In the unfortunate event of a refrigerant leak it is vital that emergency response procedures are followed, with the crew well drilled in the required actions. To facilitate prompt evacuation, emergency escape routes should be known and free of obstructions. In areas that may be at risk of refrigerant leaks consideration should be given to the provision of emergency escape breathing devices in addition to any mandatory requirements.

Members requiring any further guidance are advised to contact the Britannia loss prevention department.

**The Club would like to thank Paul Coxon of Paul Coxon & Associates for his valuable contribution to this work.**



# SEAFARERS HOSPITAL SOCIETY



**Charles Cooper**  
Loss Prevention Manager, London  
ccooper@tindaltriley.com



SEAFARERS ARE ESSENTIAL TO INTERNATIONAL TRADE AND THE GLOBAL ECONOMY, YET THEIR HEALTH AND WELLBEING IS OFTEN OVERLOOKED AND UNDERVALUED. IN RESPONSE TO THIS, THE SEAFARERS HOSPITAL SOCIETY (SHS), A CHARITY BASED IN LONDON, HAS PRODUCED; **'SEAFARERS' HEALTH: ON COURSE FOR A CULTURE OF CARE'**, A REPORT HIGHLIGHTING THE NEED FOR AN INCREASED FOCUS ON THE HEALTH AND WELLBEING OF SEAFARERS.

**THE REPORT IDENTIFIES THREE KEY HEALTH AND WELLBEING AREAS THE MARITIME INDUSTRY NEED TO FOCUS ON:**

1

### **KNOWLEDGE GAP**

There is a huge lack of knowledge surrounding seafarer health, both on board vessels and ashore. This includes areas such as nutrition, hygiene, mental health, medical standards and occupational health.

2

### **LACK OF LEGISLATIVE PROVISION**

Despite a number of international agreements concerning maritime safety and welfare, a lack of effective legislation means that seafarers are susceptible to exploitation, leading to poor mental and physical health.

3

### **LACK OF INVESTMENT IN HEALTH AND SAFETY**

Given the competitive nature of the industry, minimal emphasis is placed on investing in employee welfare, which consequently leaves seafarers exposed and vulnerable.

In light of the report's findings, various initiatives have been proposed to help improve the health and welfare of seafarers both on board vessels and ashore. These could also lead to greater job satisfaction, improved recruitment and retention rates and help reduce the number of incidents on board. The maritime industry could then attract and retain top talent, reducing the staff turnover rate and the cost of training new employees.

### WHAT CAN SHIPOWNERS DO TO IMPROVE CREW WELFARE ON BOARD:

- Implement a comprehensive system of health and safety regulations to ensure seafarers are protected from exploitation and are better supported in terms of their physical and mental health
- Introduce measures such as mental health first aid to improve wellbeing
- Ensure that precautions are in place to combat fatigue, such as limiting overtime and sea-time as well as providing high quality accommodation for crewmembers
- Use key performance indicators (KPIs) such as the number of reported injuries, rates of illness, access to healthcare services and overall crew satisfaction surveys to measure the effectiveness of crew welfare initiatives and programs
- Set up disease prevention initiatives for issues such as dental health, diabetes, high blood pressure and cancers
- Create a clear and effective complaints procedure that allows crew members to report bullying, harassment, workplace violence and sexual abuse. Additionally, establish a confidential whistleblowing policy to encourage individuals to report any misconduct without fear of retaliation
- Provide sufficient access to healthcare on board vessels and shore-side medical services
- Create systems to support seafarers' families, such as family welfare programs and improved communication links with the vessel by providing internet access on board

SEAFARERS HOSPITAL SOCIETY
SEAFARERS' HEALTH: ON COURSE FOR A CULTURE OF CARE

## International Requirements for Seafarers' Health



### Key Performance Indicators

- Frequency and nature of injuries on board leading to loss of more than three full working days.
- Frequency and nature of illness on board leading to loss of more than three full working days.
- Frequency of contact with maritime telemedical assistance services and outcomes.
- Frequency of medical evacuations and deaths on board with causes.
- Frequency of referrals for medical and dental advice in port with reasons.
- Frequency of repatriations for medical reasons.
- Frequency of termination of employment for medical reasons.

Our KPIs in this section are based upon key factors that are laid out in the Maritime Labour Convention (MLC 2006), the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), guidelines by the ILO and the International Maritime Organization (IMO) and the International Safety Management Code (ISM) which includes the Safety Management System (SMS).

**Organisations would need to assess impact on:**

- The management of health and safety risks on board (SMS and MLC).
- Seafarer medical fitness assessments (ILO/IMO Guidelines).
- Arrangements for the management of medical emergencies at sea per the MLC/STCW covering medical care training, medical facilities and equipment, as well as communications with telemedical maritime assistance services (TMAS).
- Medical and dental referral in port (MLC).
- Medical repatriation and rehabilitation (MLC).



By using Key Performance Indicator's (KPI) it is possible to establish a benchmark for how seafarer health and wellbeing is monitored and this can provide evidence for companies, seafarers and their representatives, maritime trade unions, trustees, governments and the public alike. Through this data and measurable results, we can identify which interventions are the most effective for quick and cost-effective gains. The SHS report also emphasises the importance of promoting a culture of care for all stakeholders within the maritime industry. This includes flag states, shipowners, crewing agencies, local port authorities, insurers and healthcare providers. This approach is vital in order to ensure that seafarers are provided with sufficient protection against exploitation as well as improved support regarding their physical and mental health.

SEAFARERS HOSPITAL SOCIETY
SEAFARERS' HEALTH: ON COURSE FOR A CULTURE OF CARE

## Psychological Wellbeing



### Key Performance Indicators

- Benchmarks that can be inputted on the basis of current provisions for each of these aspects, with records of steps taken to improve quality.
- Confidential surveys of crew views on quality of life at sea and exit interviews with seafarers who are leaving to assess potential organisational shortcomings.
- Monitoring and investigations of complaints about conditions on board for recognised shortcomings.
- Developing and implementing either an Employee Assistance Programmes (EAP) and/or Crisis Intervention Procedure (CIP) to confidentially support crew.
- Developing and implementing fatigue reduction programmes.
- Improving communication by ensuring all crew have a high level of fluency in the working language of the vessel, and by improving the communication and leadership skills of those in higher positions onboard/ on shore.
- Ensuring that crew have access to reliable internet connections so as to communicate with their loved ones at home.
- Promoting social activities in port consistent with the culture of crew, which can be carried out by masters and senior officers.
- Creating a clear and effective complaint procedure and confidential whistleblowing policy and procedure for reporting of bullying, harassment, workplace violence and sexual abuse.

There are numerous factors that may contribute to a seafarer's psychological wellbeing, including their personal mental health, personality, home circumstances and working/living conditions while at sea.

**Organisations would need to assess impact on their ability to offer:**

- Security of employment, with safe working conditions.
- Reliable payment of fair wages, both to seafarer and as remittance to home.
- Short cycles of sea time and leave (less than nine months).
- Skilled crew management, with prevention of harassment and recognition of good work.
- Lack of language barriers on board.
- Training of crew in mutual support.
- Minimisation of fatigue by limitation of overtime.
- Good crew mess facilities and accommodation.
- Open access to communication with home, family and friends.
- Family liaison points within the company.
- Access to external advisory and support services (which may be anonymous).
- Facilities and time for safe socialising when in port.



This report serves as a significant reminder of the crucial role seafarers play in society, highlighting the need for the sector to prioritise their health and wellbeing. It is evident that greater efforts are required to ensure that individuals can work safely at sea without sacrificing their welfare. By adopting the recommendations presented in the report, we hope that we can create an improved industry-wide culture of care that prioritises the protection of seafarers.

The full report can be accessed here.

<https://bit.ly/shs-report>



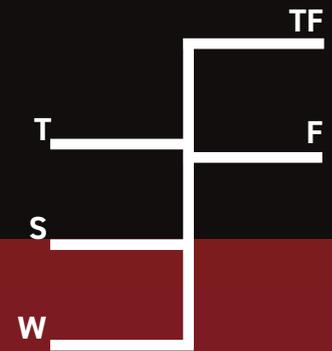
# UNDERWATER HULL CLEANING



Slav Ostrowicki

Loss Prevention Manager, London  
sostrowicki@tindallriley.com

SHIPOWNERS OFTEN ENGAGE IN UNDERWATER HULL CLEANING OPERATIONS TO MAINTAIN THE EFFICIENCY AND PERFORMANCE OF THEIR VESSELS. **HOWEVER, IT IS IMPORTANT TO RECOGNISE THAT SUCH OPERATIONS COME WITH INHERENT RISKS THAT NEED TO BE EFFECTIVELY MANAGED TO ENSURE DIVERS SAFETY AND PREVENT INCIDENTS.** THIS GUIDANCE PROVIDES MEMBERS WITH INFORMATION ON HOW TO CONDUCT DIVING OPERATIONS SAFELY AND PREPARE FOR SUCH OPERATIONS.



Underwater hull cleaning may seem like a straightforward task, but it involves various hazards that should be carefully addressed. These hazards include:



**Poor underwater visibility and/or adverse weather conditions** which may affect divers ability to avoid underwater hazards or find their way around the ship.



**Divers equipment such as hoses or cables becoming entangled in the ship's rudder, propeller, bilge keels and other underwater elements** which may result in the diver becoming immobilised or trapped under water. This in turn may result in them running out of air and lead to injury or death.



**Divers being exposed to injury** from moving ship equipment, such as bow thrusters and propellers.



**Divers being exposed to electrical shocks** from the ship's equipment if it is not powered down, for example types of cathodic protection and damaged underwater cleaning devices.



**Divers being pulled into or immobilised by the ship's suction systems**, when working in the vicinity of sea chests, which can result in injury or drowning.



**Diving equipment running out of air**, becoming damaged or malfunctioning.



**Divers being affected by decompression sickness (DCS).** This includes relatively shallow depths, where extended dive time may result in the need to surface quickly without following the appropriate decompression procedure.



**Further events involve:**

**The release of growth and debris from the hull being treated as environmental contamination.** Some port and coastal state authorities take a particular view on where such operations are allowed and on what conditions. It is advisable to seek guidance in this regard and contact local correspondents if required.



**Accidental release of chemicals**, oil or other contaminants into the water by the divers.



**The potential of unlawful activities connected with diving**, e.g. where illegal items are placed on the hull or the ship's structure is tampered with.



**As with any activity resulting in safety risk exposure, it is advisable that the preventive measures to address the above are considered in a systematic manner** i.e. through a structured risk assessment reflecting the identified hazards. Members may also have an existing, relevant procedure and/or the appropriate permit-to-work in their safety management system (SMS). We have the following comments regarding the preventive measures which should be considered:



**Divers should be appropriately certified**, trained and experienced in underwater cleaning operations.



**The plan for diving activity should be discussed and agreed by all involved** – divers, the ship command as well as deck and engine teams. This should include the general programme for the operation, the required safety precautions, communication protocols and focal persons, contingency plans and emergency protocols including emergency shutdown. The harbour master and local port authority should also be contacted prior to the start of any diving operations.

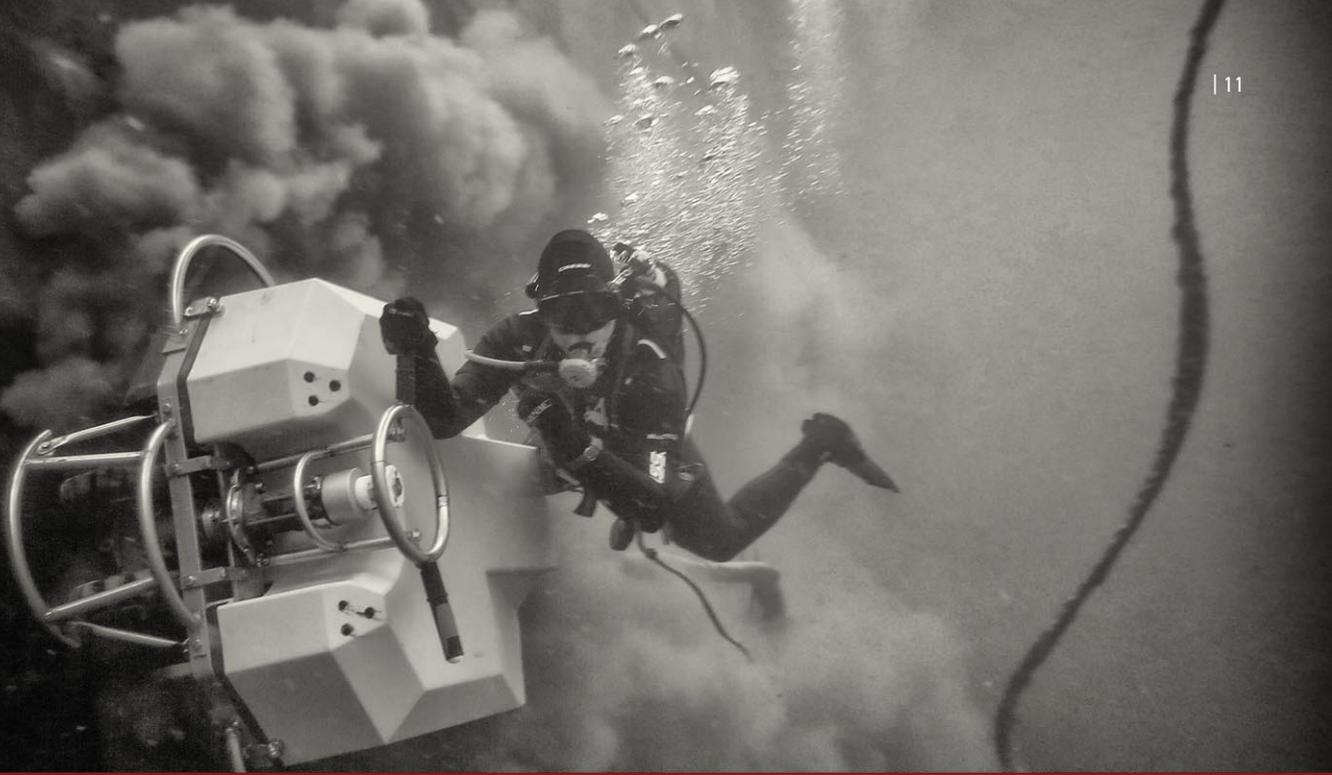


Image reproduced courtesy of DIVING STATUS Underwater Services.

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6  **All relevant danger areas such as underwater suction**s should be identified and marked for the reference of the diving crew.

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2  **No mechanical or electrical equipment (propellers, thrusters, rudders and fins), underwater suction**s or discharges should be active in the diving area in accordance with the agreed plan. The use of a lock out, tag out (LOTO) system is strongly recommended. If a continuous operation of a suction/discharge system is required, a switchover e.g. between ship sides, should be planned and agreed in advance. It should also be communicated and synchronised in accordance with the plan. The use of a LOTO system should extend to the other vessel involved in the STS operation.

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2  **A safe working zone around the underwater cleaning area should be identified and marked as appropriate with buoys or other similar means.** Clear orders should be issued to the crew regarding access restrictions and any activities prohibited in this zone during the operation. Regular announcements should be made on both vessels advising that underwater operations are ongoing. The 'Alpha' Code of Signals flag should also be raised as appropriate.

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4  **The permit-to-work and the risk assessment should indicate what emergency equipment should be available and ready for immediate use,** as well as identify the personnel qualified and designated to operate it.

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 **Weather conditions should be monitored** and underwater operations interrupted/postponed if required.

 **Sufficient lighting should be provided** at the cleaning area as required.

 **The position of the divers and the dive boat should be continuously monitored by the crew.** They should be ready to communicate with the dive team and initiate the emergency protocol at any time.

 **The ship's crew should ensure the cleaning process does not result in environmental damage** or harm the aquatic life and should adhere to international and local regulations in this regard.

 **The appropriate security measures should be maintained with regard to the underwater operation,** personnel access control and prior personnel screening. Any unusual or suspicious activities should be reported. Members may already have the relevant procedures in their ship security plan (SSP) and other measures should be considered in a security risk assessment.

**By following these guidelines and taking proactive measures to manage the risks associated with diving operations, shipowners can enhance the safety of their personnel and vessels. Members requiring any further guidance are advised to contact the loss prevention department.**

# CLAIMS AND LEGAL

## COURT OF APPEAL RULING ON MISDELIVERY CLAIM AFTER CARGO DELIVERED WITHOUT PRODUCTION OF BILLS OF LADING



**Konstantinos Samaritis,**  
Divisional Director /  
Head of Office, Greece  
ksamaritis@tindallriley.com

IN SEPTEMBER 2022 WE REPORTED ON THE ENGLISH HIGH COURT'S JUDGMENT IN *THE SIENNA* (UNICREDIT BANK AG V EURONAV NV [2023] EWCA CIV 471).

The court ruled:

a) the bill of lading was a 'mere receipt', and did not contain the contact of carriage between owners and shippers/voyage charterers (the contract issue); and

b) the bank would have agreed to discharge the cargo without production of the bills of lading in any event, so such discharge could not have caused the loss that the bank had suffered (the causation issue).

The bank appealed both findings and the case was taken to the Court of Appeal.

The bank succeeded on the contract issue, with the Court of Appeal holding that the bill of lading was more than a 'mere receipt'. The Court of Appeal said that the relevant question in determining whether a bill of lading contained or evidenced a contract was: 'what was the presumed intention of the parties at the time that the Bill of Lading was issued?'. The Court held that the bill of lading was intended to be and/or became the contract of carriage when the charterparty ceased to perform that function upon its novation by the shippers/charterers. Therefore, the bill of lading was a contract of carriage which the bank could enforce after it was endorsed to them by the shippers.

However, the High Court's judgment in respect of causation was upheld. The Court of Appeal confirmed that the High Court had asked itself the correct question i.e., to assess 'what would have happened to the bank's security interest had owners initially refused to discharge without production of the bill?'. The High Court had found as fact that the bank would have instructed owners to discharge the cargo without production of the bill of lading, i.e. the contract of carriage would have been varied by consent. The Court of Appeal, therefore, ruled that delivery without production of the bill was not a breach of the contract and would have caused the bank no loss, since the bank's security interest would have been lost in any event by the agreed variation.

The appeal was dismissed and the bank is now seeking leave to appeal to the Supreme Court.

This case provides relief to owners and carriers who agree to deliver cargo against a letter of indemnity (LOI) without presentation of the original bill of lading or knowledge of the bill of lading holder. Nevertheless, the judgment is a reminder of the serious risks involved in discharging cargo without production of the original bill of lading and the associated legal costs that can arise. Owners and carriers should therefore continue to exercise maximum caution.



# EVER GIVEN GROUNDING IN SUEZ CANAL: WHEN IS A BINDING SALVAGE CONTRACT MADE



**Derek Birch,**  
Associate Director, Singapore  
dbirch@tindalriley.com

THE GROUNDING OF THE *EVER GIVEN* IN THE SUEZ CANAL ON 23 MARCH 2021 WAS ONE OF THE MOST PUBLICISED MARITIME INCIDENTS IN RECENT YEARS. THE DECISION BY THE ENGLISH COURT (SMIT SALVAGE BV V LUSTER MARITIME SA [2023] EWHC 697) RELATING TO THE REFLOATING OF THE SHIP HIGHLIGHTED THE IMPORTANCE OF ENSURING THAT, WHEN NEGOTIATING A CONTRACT, ALL TERMS ARE AGREED AND RECORDED CLEARLY BEFORE THE PARTIES START TO PERFORM THE CONTRACT.

Following the grounding, a representative of the ship's owners asked SMIT to provide advice and, potentially, salvage assistance.

A SMIT team was deployed to the vessel and four days after the grounding, SMIT sent an email to owners proposing contractual terms for the refloating of the vessel, based on an amended WRECKHIRE form with additional clauses. The following day, the owners replied to SMIT by email with counter terms relating to the remuneration details of SMIT's proposal. In their email the owners said that if their remuneration proposals were accepted by SMIT, the parties could then deal with the contract. SMIT responded by email confirming their agreement to the owners' remuneration proposals, and asked the owners to comment on the draft contract. The owners' comments were not provided before the vessel was refloated, partly due to the involvement of the SMIT team.

Following the refloating, SMIT submitted a claim for salvage under the Salvage Convention or at common law, on the basis that the contractual terms they had proposed had never been agreed. The owners argued that a contract had been concluded on the basis of the WRECKHIRE form when SMIT agreed to the owners' remuneration terms, and therefore it was no longer open to SMIT to pursue a salvage claim.

The Court considered the legal test for whether a contract had been concluded by asking if the communications between the parties showed that:

- (i) they had reached agreement on the minimum terms required by law; and
- (ii) that they intended to be bound by those terms immediately.

If that was the case, a contract would have come into existence even if some significant terms, including economic ones, had not been agreed at that point and/or it was intended that further, more detailed terms were to be agreed at a later time.

The key question was whether the email correspondence between the parties evidenced an intention by them to be bound immediately. It was determined that while the parties had reached agreement on remuneration, that did not equate to an agreement to be bound on all the other terms. Those other terms were still being discussed and it was clear from the correspondence that the parties did not intend to be bound until negotiations had been completed and all terms agreed.

The Court held that the fact that SMIT personnel had started working to assist/refloat the vessel did not alter its finding; the work was done and the negotiations were undertaken in parallel. The negotiations regarding the contract were not completed before the vessel was refloated, and a contract for salvage services had not come into existence before the refloating.

This case is a reminder of the criteria for contractual formation and that attention should be paid to ensure all contractual terms are settled and recorded. The fact that contractual terms have been presented by one party to the other, and that some key terms have been agreed, does not automatically mean the parties have agreed to be bound by all terms, even if performance of the contract appears to have started.





**BRITANNIA P&I**  
TRUSTED SINCE 1855

[britanniapandi.com](http://britanniapandi.com)  
[britanniacommunications@tindallriley.com](mailto:britanniacommunications@tindallriley.com)