Standard Bulletin

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Mumbai Board Meeting and Club Update

There are plenty of things to report from the Club's recent Board meeting in Mumbai, held at a time when both the shipping and financial industries are going through some very choppy water.

- Financial review
- Renewal
- Directors
- Pool claims
- New rules
- Bunkers Convention blue cards
- Freight markets and club assistance

Financial review

The Board reviewed the Club's finances, both in relation to the normal half year reporting date, 20 August, and also updated to take account of the current difficult financial markets. As we have reported in our circular of 11 November 2008, at the half-year point the Club's free reserves were down from their record high level at 20 February 2008 of $226m, to $220m. However, the financial markets have been even more difficult since the end of August and so the reserves have fallen further since that time. On the other hand, claims have been in line with expectations, and in the case of some previous policy years, are showing some signs of improvement against some previous forecasts.

Action has been taken over the past 12 months to reduce the risk in the investment portfolio in a number of ways. Equities have been reduced to below the usual minimum level allowed under the Club's own investment rules, cash has been increased, bond duration has been shortened, the use of money market funds has been virtually discontinued, the cash has been distributed around more banks, and alternative investments have also been reduced. The Club cannot be immune from the current significant dislocation in the financial markets, but steps have been taken to preserve the Club's capital insofar as possible and consistent with long-term strategy.

Although the free reserves at 20 February 2009 are likely to be well down on the figure at the last year end they are expected still to be well in excess of the level needed for solvency purposes and within the range that the Board considers appropriate for the Club.

The open years are performing satisfactorily. The 2007/08 policy year is performing a little better than expected. The current year's claims picture is of a slight increase in attritional claims but a reduction in the very large claims. No supplementary call is expected on any of the open years.

In This Issue

Standard & Poor's Rating

Standard & Poor's has confirmed Standard Bermuda's rating as A with a stable outlook. The rating also applies to Standard Bermuda's subsidiaries, Standard Asia and Standard Europe.

Season's Greetings!

Season's Greetings from all of us at The Standard Club. We will not be sending cards this year, but have made donations to the Royal National Lifeboat Institution instead.

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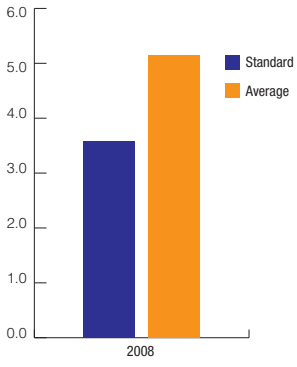
Renewal

Good progress was made last year towards improving the underwriting result, but the Club is still underwriting at a deficit on a policy year basis. In these difficult times when investment income cannot be relied upon, it is more important than ever that the Club should seek to underwrite to balance. Accordingly, the Board decided that a 15% increase in premiums is necessary. Deductibles will also be reviewed on a case-by-case basis as, in many cases, they are still very low. Defence class premiums will also be increased by 15% and although the deductible percentage will remain at 25%, the minimum deductible will rise to $7,500 and the maximum to $50,000.

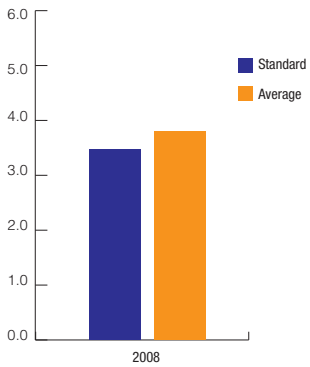
The Board was acutely aware of the difficult trading conditions facing many shipowners, and debated strongly whether the increase in premiums could be moderated at a time when many shipowners are facing severely depressed trading. However, the Board felt that the Club had no option but to underwrite on a prudent basis so as to maintain the Club's financial strength. In the light of this it is essential that a firm approach is taken to renewal this year.

Premium per ton



This ratio expresses how many US$ per owned ton are collected as premium

Claims paid per ton



This ratio expresses how many US$ per owned ton are paid out in claims

The Board noted that the average premium per gross ton in the Standard Club is well below the International Group average. So is the claims cost per ton. Of course, a number of factors lead to average numbers, such as the make-up of the Club's membership, but nonetheless the figures are instructive, and demonstrate a good performance by the Club in keeping both claims and premiums down.

Directors - appointment and retirement

The Board was pleased to welcome Mr J N Das of The Shipping Corporation of India to the Board. SCI has been a member of the Club for many years and we are delighted that the company will again be represented on the Club Board.

Javier de Sendagorta retired from the Board after many years' service and the Board recorded its gratitude for his great contribution to the Club's affairs. He had also been one of the two deputy chairmen, and Constantine Peraticos was appointed to serve alongside Rod Jones as a deputy chairman.

Pool claims

Pool claims are, so far, a little lower in the current year than in the previous two years, but the northern hemisphere winter is still to come, so it is premature to 'count our chickens before they are hatched'. In any event, the Standard Club has the best record on the Pool of any club in the International Group and has a significant 'credit balance' with the Pool, having contributed more than $60m towards other clubs' claims which is more than has been taken out towards our own claims in the last five years. Of course, pool claims are largely random and it is possible for this position to reverse. However, in the meantime the Club has established a significant cushion to absorb pooling liabilities. No credit for this balance is taken in the Club's accounts but it represents a hidden strength for the Standard Club within our market.

The idea of the Pool (at least at the primary layer) is that clubs should pay in what they take out, i.e. should result in a 100% loss ratio over time. We are very keen to see the Group finalise a review of the pooling mechanism to ensure a speeding up of the process whereby clubs with credit or debit balances return towards a 100% loss ratio position within a reasonable time-frame.

New rules

At a Special General Meeting, also held in Mumbai, the Club's new streamlined rules were approved by members, to take effect from 20 February 2009. The new rules, which have been published and explained to members during the summer, will reduce the number of words significantly, clarify and modernise the wording, and altogether be a more user-friendly document. There are likely to be a few additional technical rule changes to be put before members at a further SGM in January to take account of changes to the Pooling Agreement which are currently being discussed within the International Group.

As a result of the new rules, there will also need to be new-style certificates of entry. As well as reflecting the new rules structure and numbering, the opportunity has also been taken to modernise and streamline the format of the certificates.

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STANDARD CLUB RECEPTION HELD IN CONJUNCTION WITH THE RECENT BOARD MEETINGS IN MUMBAI

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Knock-for-Knock Knocked?

Sharmini Murugason commented on the effect of "knock-for-knock" clauses in the *Standard Bulletin* in October 2007 and Alistair Groom echoed those views in the July 2008 edition.

As is common in the offshore industry worldwide, knock-for-knock clauses are prevalent in contractual arrangements in oil and gas fields offshore Australia, whereby each party to a contract takes sole responsibility for its own employees and property.

However, a recent Court decision in Western Australia has cast doubt on the effect of knock-for-knock clauses, at least in relation to personal injury matters. The Court of Appeal in Delron Cleaning Pty Ltd v Public Transport Authority [2008] WASCA 68 refused to uphold a contractual indemnity of this type.

In reaching its decision, the Court – in essence – referred to a general prohibition on "contracting away rights" under workers' compensation legislation and determined that this prohibition was not limited to rights as between the employee and the principal employer but also as between the principal employer and third parties.

Although this decision is potentially limited to situations where the employment is subject to the West Australian Workers' Compensation and Injury Management Act 1981, operators in Australia should be aware that similar provisions precluding contracting out apply in some other Australian jurisdictions so there is a reasonable prospect this decision will be followed in those jurisdictions.

The effect of the decision could require a knock-for-knock clause to be "read down" so as to exclude employee injury claims, but the risk of the whole knock-for-knock clause being severed in its entirety from a contract cannot be excluded. In either case the outcome would be for the knock-for-knock clause to fall away and as between the two parties to the knock-for-knock clause, liability would be determined and applied based on their respective fault.

In entering into any future agreements for use in Australia, care should be taken so as to ensure that knock-for-knock clauses contain an exception in respect of statutory prohibitions on "contracting out" as well as an adequate severance clause, and that appropriate insurance cover is in place for any residual liability.

This case follows on from the "Koumala" decision (which was reported in the *Standard Bulletin Offshore Special Edition* in October 2008) in which the Court of Appeal in Queensland indicated how a contractual exclusion clause could be void as an improper contracting out of implied warranties contained in the Trade Practices Act 1974. The same principles of that Queensland case could also apply in interpreting a knock-for-knock clause (both personnel and property), subject to the proviso that the protection of implied warranties only applies in "consumer contracts", that is contracts with a value of less than A$40,000.

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Bunkers Convention – Blue Cards

Nearly all of these have now been issued to those members who need them. The process seems to have gone smoothly and we hope that members have been able to obtain certificates issued by flag and other states as required.

The applicability of the Bunkers Convention to many ships, even quite small ones, has meant that a number of ships, which would not otherwise have been entered in clubs or have extensive P&I cover, have needed to increase their pollution coverage. In particular, some super-yachts now need higher cover limits. One such ship is the stunning and state-of-the-art Maltese Falcon, reputed to be the most expensive sailing boat ever built, which has been entered in the Standard Club.

A particular legal-technical issue has arisen over Blue Cards for certain offshore units such as FPSOs and mobile drilling rigs. We are in the process of finding a solution for our members to enable them to comply with the Convention requirements.

Freight markets and club assistance

As mentioned above, we are very aware of the extremely difficult trading conditions facing shipowners. We recognise that this will impact owners in many ways and it is unfortunate that these trading conditions exist at a time when the clubs all need to increase premiums to balance their books. Of course, the two phenomena are in fact both results of the same world-wide financial crisis.

Defence class claims are showing an increase, which is not surprising given the very volatile state of the freight markets. In these market conditions, many shipowners and operators are likely to have disputes or need advice in relation to a wide range of contracts. The services of the Defence class are in great demand, and we are doing our best to help members navigate through their legal relationships.

We employ lawyers in all of our principal P&I management offices and expect their services to be well-utilised over the coming months.

THE *MALTESE FALCON*

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Consequential Losses in Offshore Contracts

Andrew Iyer provides a general overview of how English law approaches consequential loss in offshore contracts, based on the presentation he gave at the Standard Offshore Forum, which was held in London in October 2008.

The management and allocation of risk in offshore contracts is generally achieved by means of the inclusion of a "knock-for-knock" clause. Pursuant to such a clause the respective parties agree to undertake responsibility for loss or damage to their own property or for injury or death to their own employees and identified parties. The basic principles apply irrespective of blame and are intended to save time and expense in connection with casualties.

Under the Supplytime (both the 89 and 05 formats) and the revised Heavycon 2008 contracts, the "knock-for-knock" provisions are both immediately followed by an exclusion clause in respect of "consequential losses".

General Common Law Principles

Following a breach of contract under English law, damages are awarded in order to put the innocent party, as far as possible, in the same position as if the contract had been performed successfully. The types of loss generally recoverable for a breach of contract have been divided into what have become known as "direct losses" and "indirect losses". It is often assumed that "consequential losses" are necessarily equivalent to, or a type of, indirect loss. However, in some contractual situations this assumption is not strictly accurate and contractual construction difficulties have arisen as a result.

The seminal case of *Hadley v Baxendale (1854) 9 Exch 341* gave rise to what has become known as "limb one" and "limb two" of recoverable loss in contract. The case concerned late delivery of a mill part and a claim for lost profits. The court rejected the claim on the basis that the removal company did not know that the speed of its delivery would affect when the mill could restart production.

The rule was subsequently re-stated in *Victoria Laundry v Newman [1949] 2 K.B. 528* and later by the House of Lords in *Czarnikow v Koufos [1969] 1 A.C. 350*. In *Victoria Laundry* the type of knowledge which the parties must possess in order for the loss to be recoverable was explained as follows:

"For this purpose knowledge "possessed" is of two kinds one imputed and the other actual. Everyone as a reasonable person is taken to know the 'ordinary course of things' and consequently what loss is liable to result from a breach of contract in that ordinary course. This is the subject matter of the 'first rule' in Hadley v Baxendale (1845) 9 Exch 341. But to this knowledge.. there may have to be added in a particular case knowledge which he actually possesses of special circumstances outside the 'ordinary course of things' of such a kind that a breach in those special circumstances would be liable to cause more loss. Such a case attracts the operation of the 'second rule' so as to make additional loss also recoverable."

Indirect losses, or "limb two" losses, therefore can only be recovered in English law if the party in breach had actual knowledge which rendered him aware at the time the contract was concluded that such a loss would result from a breach. However the party in breach need not be aware of the exact scale of the loss.

Definition of the term "consequential losses"

According to McGregor on Damages;

"In contract the normal loss can generally be stated as the market value of the property, money or services that the claimant should have received under the contract, less either the market value of what he does receive or the market value of what he would have transferred but for the breach. Consequential losses are anything beyond this normal measure such as profits lost or expenses incurred through the breach and are recoverable if not too remote."

The difficulty is that this distinction between 'consequential loss' and all other loss, is NOT the same as that between the first and second limbs in the *Hadley v Baxendale* rule i.e. a "consequential" loss may well fall within the first rule as a "direct loss" which was a natural consequence of the breach. It is therefore strictly inaccurate to say that the Hadley v Baxendale second limb covers only and every "consequential" loss.

Allocation of risk for consequential loss in offshore contracts

Recent interpretations of the term "consequential losses" in exclusion clauses have rendered the presumed scope of certain 'knock-for-knock' clauses less wide than many parties may have assumed was the case. Parties can still be found liable to meet certain "consequential losses" in offshore contracts provided that loss is deemed to be incurred as a "direct" loss following a breach of contract, regardless of the application of a 'knock-for-knock' regime. Loss of profit is an example of this.

English courts will construe exclusion and limitation clauses strictly against the party seeking to rely upon them pursuant to the *'contra proferentem'* rule. In the context of consequential loss clauses in offshore contracts, the contra proferentem rule can have quite dramatic consequences.

In *Croudace v Cawoods [1978] 2 Lloyd's Rep 55* the relevant clause at issue in that case provided: "we are not under any circumstances to be liable for any consequential loss or damage caused...". The Court of Appeal held that the word "consequential" did not cover any loss which directly and naturally resulted in the ordinary course of events from late delivery.

The reasoning adopted in *Croudace v Cawoods* has been followed in a number of recent authorities. In *Addax v Arcadia [2000] 1 Lloyd's Rep 493* a clause provided that; "in no event shall seller or buyer be liable for indirect or consequential damages." It was held that "hedging costs" incurred were recoverable as direct losses and were not "consequential loss."

In *British Sugar plc v NEI Power Projects (1998) 87 BLR 42 CA* faulty power station equipment supplied by the defendant led to increased production costs and loss of profits for the claimant. It was held that in the particular circumstances of that contract those losses beyond the normal loss did not fall within an exclusion of liability for "consequential" loss and were recoverable as direct losses.

In *Watford Electronics Ltd v Sanderson [2001] BLR 143* the Court expressly equated the exclusion of liability for "indirect" or "consequential" losses with the exclusion of liability for losses falling within the second rule in *Hadley v Baxendale*.

Application to Offshore contracts

Under English law, therefore, use of the wording "consequential losses" alone in an exclusion clause in an offshore contract may be insufficient to protect an owner from costly claims for loss of profit, production or business interruption. Nevertheless the main hiring contracts (TUGHIRE, TOWCON and SUPPLYTIME 89 (and revised 05)) and the Heavycon 08 contract each have consequential loss provisions which purport to protect the parties from claims for "consequential losses" specifically.

Specific Clauses

(i) 12(c) Supplytime 89

Turning to examine the specific relevant exclusion clauses, Clause 12 (c) of the Supplytime 89 form provides:

"Consequential Damages: Neither party shall be liable to the other for and each party hereby agrees to protect, defend and indemnify the other against ***any consequential damages*** *whatsoever arising out of or in connection with the performance or non-performance of this Charter Party* ***including but not limited to, loss of use, loss of profits****, shut-in or loss of production and cost of insurance."*

The above exclusion clause has been considered by an arbitration tribunal (see 2002 LMLN 585 17 April 2002). Owners contended that clause 12(c) was clear in that it excluded liability for consequential losses and they argued that the type of losses claimed (salvage expenses) were typical of consequential losses.

The tribunal held that the majority of damages claimed related to the loss of use of equipment rented by the charterers and of personnel connected thereto and that they would be excluded by the words "loss of use" in clause 12(c).

Clause 12(c) Supplytime 89 has therefore received a less restrictive interpretation than other consequential loss exclusion clauses addressed above. Notwithstanding this arbitration decision in my view, in light of the above discussed line of cases, there remains a good chance that a court/tribunal could decide that Clause 12(c) does not operate to exclude recovery of damages in respect of loss of use, loss of profits, production, shut in or cost of insurance if it could be said that in the particular circumstances of the contract those losses were "direct" or that the losses could be said to have naturally resulted from the particular breach.

In my opinion any party seeking to rely on Clause 12 (c) should be forewarned. If the parties wish to exclude recovery for all loss of profits, production insurance costs etc, including all such losses which could possibly be termed a "direct" loss of profits, then this needs to be clearly stated and the above clause amended to reflect this intention by inclusion of the word "direct" loss.

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Steel Preloading Surveys - Finished Steel Products

The Club requires, as a condition of cover, a preloading survey whenever finished steel products are carried. The survey is a means of detecting pre-shipment damage so that it can be recorded on the mate's receipt and bill of lading. The objective is to avoid situations where members, whose ships carry finished steel, are presented with cargo claims where the damage occurred before loading, something for which they are not liable so long as the damage has been correctly noted on the bill of lading. The Club routinely arranges these surveys but, from time to time, we are asked which steel products fall within the definition of 'finished steel'. In particular, members have been unsure whether construction steel or project cargo needs to be surveyed.

There are many different products that could be described as 'finished steel'. However, for the purposes of the Club's cargo rules, finished steel products are products **that will not be further processed at a steel mill before being used for further manufacturing**.

Finished steel **includes:**

- Hot or cold rolled steel coils
- Steel wire coils
- Steel plate, bars, profiles, channels, angles, joists
- Sheet steel
- Steel pipes

Finished steel **excludes:**

- Steel billets, ingots, blooms and ore
- Semi-finished steel slabs
- Scrap steel
- Steel re-bars and D-bars
- Project cargo and or flat packed steel structures.

For further information on the Club's requirements for preloading steel surveys, please see;

1. Standard Safety, Issue 16 December 2004: Steel Preloading Surveys - New Requirements.
2. Marine Matters Issue 24 - March 2005: Steel Preload Surveys.
3. Standard Bulletin 26 February 2007: Problems Encountered During Steel Preloading Surveys.

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(ii) 14(c) Supplytime 05

Clause 12(c) of Supplytime 89 has been replaced with Clause 14(c) in the Supplytime 2005 version. The obligation is extended both to claims under knock-for knock and performance claims under the charter party.

Clause 14(c) provides:

"Consequential Damages.

Neither party shall be liable to the other for any consequential damages whatsoever arising out of or in connection with the performance or non-performance of this Charter party and each party shall protect, defend and indemnify the other from and against all such claims from any member of its Group as defined in Clause 14(a).

'Consequential damages' shall include, but not be limited to loss of use, loss of profits, shut in or loss of production and cost of insurance whether or not foreseeable at the date of this Charter party."

(iii) Clause 23 Heavycon 08

Clause 23 of the Heavycon revised 2008 version is identical to Clause 14(c) Supplytime 05 above. Clause 23 Heavycon 08 is a new Clause introducing a Consequential Damages Clause for the first time into Heavycon contracts.

Clause 14(c) Supplytime 05 and Clause 23 Heavycon 08 are more broadly worded than the Supplytime 89 equivalent clause 12(c) and the TOWHIRE/TOWCON clause 18.3. I think that the reference in the final sentence to the exclusion of consequential losses *"whether **or not** foreseeable"* could be interpreted as being intended to exclude direct consequential losses as well as those falling under limb two of *Hadley v Baxendale*. In my opinion it is quite possible that a tribunal or court could reach the view that inclusion of all loss of profit that was *"foreseeable or not"* must necessarily include losses falling within the first limb of *Hadley v Baxendale* as well as those falling within the second limb. The lack of any reference to "any other indirect losses" (in contrast to clause 18.3 of Towcon) would tend towards such an interpretation. However there is also a risk that given that the specific term used is those clauses is still "consequential loss", then based on the above discussed line of cases and on the *eiusdem generis* rule, a court/tribunal may interpret the clause as excluding only limb two losses and not any losses falling under limb one assuming they are "direct" or natural losses.

Conclusion

I would therefore advise any party intending to rely on these clauses and wishing to protect itself from liability for *all* loss of profits, loss of production, insurance, shut-out costs etc to insert an amendment into clause 14(c) Supplytime 05 and/or clause 23 Heavycon 08, referring specifically to all loss of production, profit insurance etc whether foreseeable or not **and** whether 'direct' or indirect loss. In my view use of the term "consequential losses" alone in such a clause remains too ambiguous and uncertain.

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Proposed New US Effluent (including Ballast) Permits Required After 19 December 2008

This article explains the environmental regulations that will shortly affect vessels calling and trading within US waters. The United States is introducing new environmental regulations for all commercial vessels over 300 gt; for vessels with more than 8 cubic metres of ballast water; and/or for vessels over 79 feet long, trading within US waters. This effectively means all commercial vessels trading within US waters, including barges, will require a permit to discharge any pollutant, including ballast water; there is a list below.

The introduction of the regulations has been forced upon the EPA as a result of legal action taken by citizen groups within the US. Therefore, the regulations have been rushed in, and their full impact and implications for shipping have yet to be ascertained. In order to meet its obligations under the CWA the EPA will issue a Vessel General Permit (VGP) covering all commercial ships. It is not necessary to obtain a separate permit for each ship. Instead, ships will be covered automatically by the VGP for the first six months, following which ship operators will have three months to file Notices of Intent (NOIs) to receive further coverage under the VGP. Ships will then be required to comply with the requirements of the VGP.

From 19 December 2008, all commercial ships 79 feet (24.08 meters) in length or greater with discharges of pollutants incidental to their normal operation, including but not limited to ballast water discharges, into the US three mile territorial sea or inland waters will become subject to the EPA VGP requirements and will ultimately need individual permit coverage. Members whose ships will be calling at US ports after this date are strongly recommended to begin development of a compliance programme based upon the requirements found in the EPA proposed VGP, while keeping in mind that changes to their compliance programme may need to be made after the final VGP is issued by the EPA.

The regulations require ships within US waters to:

- control (inspections)
- monitor (analyse)
- record

all effluents and discharges from the vessel during its normal operations. This includes ballast, bilge and grey water discharges.

These regulations are expected to be published on 19 December 2008.

We recommend that all members, managers and owners understand these requirements.

Background:

Following a number of court cases in the US the EPA published a draft notice of intent in July 2008 stating that they would be regulating incidental discharges from ships. Previously such discharges had been exempt, but this was challenged in court and the policy has been changed accordingly.

A court in California ruled that the EPA had violated the law by allowing ships to be exempt in discharging ballast water and other discharges. The National Pollution Discharge Elimination System (NPDES) which had traditionally dictated the effluent discharges from shore installations was deemed to apply to ships when in US navigable waters.

The EPA was given until 30 September 2008 to develop a regulatory system. The EPA appealed and lost, but was given an extension until December 19 2008 to produce a regulatory framework for ships.

Proposed Requirements

The EPA has issued the following proposed regulations and permits required by commercial vessels navigating in US waters. These permits are necessary for all effluents generated from a vessel in normal operations.

The permits will be issued by the NPDES. The situation is not at present completely clear as the regulations will not be published on 18 December 2008. In view of the short time scale members are advised to closely look at the regulations and prepare for the forthcoming legislation.

Vessel General Permit (VGP) Requirements

- Applicable to all commercial vessels over 79 feet in length or over 300gt or having a ballast capacity of over 8 cubic metres navigating in US waters (up to 3 miles offshore).
- Permit term maximum 5 years and US national in scope.
- Vessels being used as an energy or mining facility, a storage facility, a seafood processing facility or where secured to the seabed for mineral or oil exploration or development are not eligible for coverage under the VGP.
- Vessel operators are required to submit a Notice of Intent (NOI) - (can be done online), to operate under the provisions of the VGP, beginning six months after the permit's issue date.
- A non-compliance of the VGP is a violation of the Clean Water Act (CWA).
- NOI is simple to complete and submit, and identifies which discharges are relevant to each ship. Once issued the vessel is considered acting under the provisions of the VGP.
- The VGP will be subject to verification by USCG's and local port officials.
- One VGP incorporates the USCG's mandatory ballast water management place and ballast exchange requirements for ballast water. There are a further 27 other discharge types; including:-

- deck run off
- bilge water discharge
- grey water discharge
- boiler blow down
- chain locker discharge
- fire main discharge
- stern tube oily water discharge
- grey water mixed with sewage
- refrigeration and air condensate discharge
- seawater cooling discharge
- biofouling prevention
- exhaust-gas scrubber
- controllable pitch propeller hydraulic fluid

For full list of discharge types see under categories:
http://www.epa.gov/npdes/pubs/vessel_commercial_permit.pdf

Some effluent categories comply with existing MARPOL requirements. Most do not.

VGP are not required for;

- Vessels operating beyond 3 mile territorial limit
- Sewage (blackwater)
- Grey water from vessels operating within Great Lakes.

Inspections, Monitoring, Reporting and Record Keeping as from 19 December 2008

Inspections:

- Conduct routine visual inspections of all areas addressed by the VGP including:
  - cargo holds
  - deck areas
  - machinery storage areas
  - boiler areas

  to ensure that these are clear of garbage, exposed raw materials, oil or visible pollutants.
- Once weekly visual inspection of:
  - decks and cargo areas where chemicals, oils or dry cargo, mixed or used.
  - confirmation that monitoring, training, and inspections are logged as per VGP.
- Watch keepers should include visual monitoring for water around and astern of the vessel.
- Attention paid to deck run off water, ballast and bilge water.
- At least every 3 months a sample of the discharge stream of the bilge water and/or grey water that are not usually visible is to be inspected for signs of visible pollutants.

Routine Vessel Inspection Documentation

Each routine inspection is to be documented in the Official Log Book (OLB) or other documentation referred to in the regulations.

Annual Comprehensive Vessel Inspection

Annual inspections conducted by a qualified person, this can include the master or superintendent.
Scope of inspection to include but not limited to:

- Vessel hull for attached survey organisms, flaking antifouling paint, exposed TBT surfaces
- Ballast water tanks
- Bilges, pumps, OWS sensors
- Lubrication seals, hydraulic leaks
- Visible pollution control measures operational
- Confirmation that inspection and record keeping is being carried out

Annual inspection can be combined with a quarterly inspection.
Non-conformities must be rectified.

Drydock Inspections

A drydock report must be available to the EPA or USCG on request.

This report must include:

- Confirmation chain locker cleared of sediments and organisms
- Hull inspected and cleaned of growth and organisms
- Antifouling hull coatings applied and maintained, and not containing banned substances
- Cathodic protection systems cleaned
- Pollution control equipment operational

Record Keeping

Refer to VGP regulations. All vessels covered by the VGP must keep written records on board.

- Vessel information
- Voyage logs
- Documented effluent violations
- Corrective actions
- Routine inspections and findings
- Annual inspections and findings
- Analytical results of monitoring conducted
- Maintenance and discharge logs including:
  - bilge water discharges
  - painting application
  - chain locker and tank inspections
  - CPP/Stern tube maintenance
  - grey water discharges

- Operators can chose how these records are maintained and they must be available to EPA or USCG.
- Records must be maintained for 3 years.

Ballast Tank Records

For vessels entering or navigating in US waters the following records must be maintained:

- Total ballast water information, capacity, volume.
- Ballast water management. Ballast management plans.
- Information as to ballast water to be discharged into US waters including: origins of water, temperature, location, volumes.
  - Ballast water exchange details.
  - Discharge of sediment.

Reporting Of Non-Conformities

Once a year all instances of non compliance must be reported to the regional offices listed.

Cruise Ship Requirements

Vessels authorised to carry passengers have additional effluent limits imposed.

These are also additional requirements for:

- monitoring requirements
- training of personnel
- maintenance

BARGES (hopper, chemical, tank, crane, dry bulk barges)

There are requirements for:

- additional effluent limits
- supplemental inspection requirements

Oil Tankers

- inert gas systems; the effluent from IG scrubbers may be discharged
- deck scuppers must be plugged when loading/unloading additional inspection requirements after loading/unloading
- training requirements

The regulations also give guidance for research vessels and rescue vessels.

Vessels employing experimental ballast water treatment systems have specific requirements.

Recommendations

Most mature Safety Management Systems (SMS) will only require minor adjustments to comply with the VGP regulations. The interim regulations should be used as preparation for the NOI and adjustments to shipboard procedures.

1) Ensure EPA/NPDES - Vessel General Permit for discharges incidental to the normal operation of commercial vessels is reviewed.

2) Download a copy of the NOI and determine which discharges are applicable.

3) Review existing sampling, monitoring, and record keeping procedures. These will include: OLB, SMS requirements. Planned maintenance system records, oil record book, ballast management place records.

4) Determine existing hull coatings and records and certificates.

5) Ensure drydock specifications include cleaning of chain lockers, cable, and ballast tanks.

6) Keep drydock records as per the VGP.

7) Devise maintenance records to include the VGP effluent requirements.

8) Review masters/ vessel inspection requirements and record keeping.

9) Advise vessels of the impending requirements.

Additional Information

Please refer to the Standard Club website www.standard-club.com for further details. There is also further information available on the EPA and USCG websites below:

http://www.epa.gov/npdes/vessels

http://www.epa.gov/npdes/pubs/vessel_overview.pdf

http://www.epa.gov/npdes/pubs/vessel_commercial_permit.pdf

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Standard Club member and broker survey

The quality of claims service and financial security come top of the list of priorities when members and brokers assess P&I clubs.

We carried out a survey of members and brokers earlier this year to identify members' priorities in choosing a P&I club and to identify where we are performing well and where there may be areas for improvement. An independent research company, Consensus Research, was engaged to conduct the survey to ensure that views remained confidential. From May to August, members and brokers were asked to participate in either an in-depth or an online survey. The response rate, at over 50%, was high and we are grateful to all those who participated.

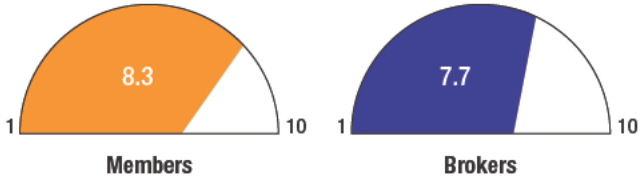
Members and brokers were asked to rate the Standard Club's performance in various areas, such as underwriting, claims handling, IT, safety and loss prevention, communications and management of the Club, compare the Standard Club's performance in these areas against that of other P&I clubs, and rate the importance of these factors in choosing a club.

Key findings from the survey:

- Overall satisfaction levels are high amongst both members and brokers.
- Claims service and financial strength are considered the most important factors by both members and brokers in choosing a club.
- The Club performed well in the areas which both members and brokers consider important in choosing a club.
- An overwhelming majority of brokers and members considered that the Standard Club was financially as strong as or stronger than its competitors.
- A majority of members and brokers consider the Standard Club to be as good as or better than its competitors in claims service.
- The calibre of the managers' staff was well regarded.

Overall satisfaction levels with the Club were 8.3 out of 10 from members and 7.7 out of 10 from brokers.

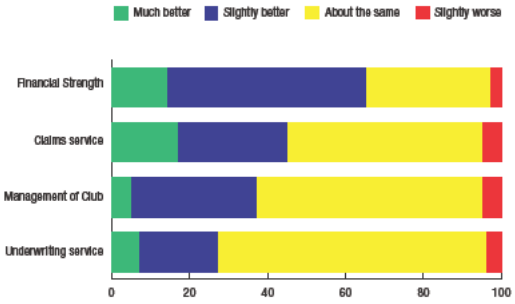
Overall Satisfaction



Financials, management, board oversight

The financial security of a club was a very important factor in choosing or recommending a club. 97% of members and brokers believed that the Club was as financially strong or stronger than other clubs, which is a significant strength in these financially turbulent times. Nearly all members and brokers considered the Standard Club was managed as well as or better than other clubs.

Standard performance v other clubs - Members



Claims service

This was considered the most important factor in choosing or recommending a club by both members and brokers. The Club scored highly on satisfaction from both groups. As a result of the high scoring in importance for this factor, the Club cannot afford to be complacent in this area. The calibre of staff providing this service was highlighted as a strength, along with their knowledge of members' businesses, whether through the London or regional offices. The Club was seen as both fair and pragmatic in its management of claims. It was recognised that we want to support our members to ensure they can continue to run their businesses.

Underwriting service

The calibre of staff, their availability and their understanding of members' businesses and regional and market differences was a strength of the underwriting team. There is an understanding that marine insurance is a very personal business and the strength of the relationships the underwriting team have with the members and brokers was rated highly. The speed and accuracy of documentation was an area where the Club could improve its performance. All insurance companies regularly achieve lower satisfaction levels in this area.

Communications, IT and website, publications, seminars, training, loss prevention

The quality of articles in the Club's publications was scored highly, however, the frequency of publication could be improved and as a consequence, we will issue our Standard Bulletins and Standard Safety publications on a more regular basis. The quality of the seminars and events hosted by the Club are scored highly, however, there is a desire to hold these in more locations and on a wider range of topics.

Safety and loss prevention activities were not a particularly key factor in choosing or recommending a club. Nevertheless, although the ship survey process received good scores, loss prevention is the area in which some members consider that the Club could make improvements.

The Club's use of IT is not regarded as highly as other clubs. The Club's website standard-club.com is being redesigned and there will be a gateway for members and brokers to access claims and underwriting information online.

As we said we would, we have made a donation to the Mission to Seafarers as an acknowledgement of our appreciation of participation in the survey.

BY CHRIS SPENCER,
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Piracy Update

The Standard Bulletin Special Edition on Piracy in the Gulf of Aden advised on the measures that could be taken for ships transiting the Gulf of Aden. The Bulletin advised that piracy activity was likely to increase in the short term, that members should be aware that pirate activity on the eastern Somali coast continues and is increasing and that vessels transiting this area should consider maintaining a distance of 300 miles from the coast.

Recent incidents show that the pirates' activity has escalated to a new level. Owing to the publicised increase in shipping activity in the Gulf of Aden, and that this activity is proving to be a very lucrative trade for the pirates, there are now rumoured to be over 30 different gangs operating.

Since the beginning of the year, over 100 vessels have been attacked in Somali waters, some 30 vessels taken hostage with 17 ships presently detained and ransom negotiations presumed to be ongoing.

Members are advised that all their vessels transiting the Southern Red Sea, Gulf of Aden and Indian Ocean within at least 600 miles of the Somali coast should increase their security level onboard and consider the advice provided in the previous Standard Bulletin.

Members are advised to:

- Ensure that vessels transiting the south Red Sea, Gulf of Aden and Indian Oceans are fully aware of the piracy threat and are taking additional preventative measures
- Be aware that radars often have shadow areas – usually preventing targets being detected astern
- Consider placing additional personnel onboard to provide effective security watch keeping
- Consider using specialist security advisors, equipment and personnel
- Ensure that a copy of the Standard Bulletin – Piracy in the Gulf of Aden is provided to all their vessels.

THE SEIZURE OF THE *SIRIUS STAR* TAKES PIRACY TO A NEW LEVEL

The following practical advice is issued by the IMO;
http://www.marisec.org/piracy/general%20guidance.htm#IMO%20Directives

Members are advised to monitor all sources of information including the updates from the IMB and the US Maritime Administration (MARAD) which issues advisory notices, providing suggested anti-piracy distress calling procedures for commercial vessels transiting the Gulf of Aden:

(1) When in distress, call for help on VHF-16 and MF/HF DSC;

(2) Contact UKMTO by phone at +971 50 552 3215 or email at ukmto@eim.ae;

(3) If unable to contact UKMTO, contact MARLO Bahrain by phone at +973 3940 1395 or by email at marlo.bahrain@me.navy.mil; and

(4) Activate the ship security alert system (SSAS).

Standard Safety on anchoring

The Club recently published a special edition of Standard Safety on Anchoring. There have been a significant number of groundings, collisions and near miss incidents caused as a result of manoeuvring in an anchorage, dragging anchor or leaving it too late before heaving up an anchor in poor weather.

These incidents have resulted in the loss of lives, pollution, and costs running into tens of millions of dollars. Many notable incidents have been captured on international television and have commanded frontpage news, allowing worldwide publicity exposure.

If you would like extra copies of this publication or more information on anchoring, please contact Chris Spencer, Director of Loss Prevention, chris.spencer@ctcplc.com or +44 (0)20 7680 5647

Club News

Standard Offshore Forum, 29 October 2008

The growing difficulty in recruiting people with the necessary skills was cited as the biggest challenge facing the offshore oil sector in a poll of delegates attending the annual Standard Club offshore forum in London on 29 October.

The event, a gathering of the Club's offshore members from around the world, included a debate regarding the risks faced by the sector. Afterwards, 61% of the 55 people taking part cited the numbers of suitable personnel in a vote as to the biggest challenge facing the sector. Shortage of personnel came well ahead of geopolitical issues with 17%. Asked to predict what would be the biggest risk in ten years time, personnel again came top with 35%. However, environmental issues came a close second with 33%, reflecting concern at the increasingly remote and hostile geographical locations where oil exploration is taking place.

The Forum also included presentations by Alistair Groom, Chief Executive of the Standard Club, on the Club's performance over the past 12 months, and by Andrew Iyer, head of the global Energy and Offshore Group at lawyers Ince and Co, on the topic of consequential loss clauses in offshore contracts. An article based on Andrew Iyer's presentation is published on page 4 of this edition. Contact Barbara Jennings, Director Offshore on +44 (0)20 7522 7429 or barbara.jennings@ctcplc.com, for more information. Copies of the presentations can be found on standard-club.com and Forum.

Standard Asia Offshore Forum 11 December 2008

The Club will host the third annual Standard Asia Offshore Forum in December in Singapore. The Forums provide an opportunity for shipowners involved in the offshore oil and gas industry to meet and talk with their contractor and oil company clients in an informal environment. They are open to shipowners involved in the offshore industry, whether or not they are members of the Standard Club, as well as to representatives of the marine contracting and oil and gas industries.

The agenda includes presentations on the background to Offshore P&I cover, Offshore underwriting and reinsurance, the overlap between P&I and CAR cover, and a review of the 'Bourbon Dolphin' incident. The forum will also include a paper on contractual issues, and will conclude with a workshop based session on how an offshore insurance programme would respond to a large claim.

Attendance is by invitation, so if you or your colleagues or clients are interested in joining us, please contact Robert Drummond on +65 6506 2896 or Robert.Drummond@ctcplc.com

Standard Asia Member Training , 9 and 10 December 2008

The Club will host a training forum for members in Singapore in December. Presentations will cover topics such as club cover, personal injury, cargo, collision and pollution issues. There will also be presentations and workshop on a major casualty scenario. If you or your colleagues are interested in joining us, please contact Robert Drummond on +65 6506 2896 or Robert.Drummond@ctcplc.com

Dates for 2009

The Board will meet on Tuesday 27 January in Paris, Friday 15 May in Bermuda and Friday 9 October in Singapore.

The Club's Annual General Meeting will be on Friday 9 October in Singapore.

Coral Sea master acquitted on drugs charges

The master of the reefer ship Coral Sea, which is entered with the Club, has been found innocent of drugs trafficking offences by a Greek appeal court after spending 17 months in a high security Athens jail.

The five-member appeal court in Patras acquitted Captain Laptalo of all charges arising from the discovery of 51kg of cocaine in a consignment of bananas in July 2007. Following the discovery of the drugs during a routine inspection of the cargo, the member self-reported to the authorities. Despite this the master, chief officer and bosun were charged with criminal offences relating to drugs trafficking and although the chief officer and bosun were subsequently acquitted, the court delivered a shock guilty verdict four months ago against Captain Laptalo who was sentenced to 14 years in prison. On appeal, the court took little time in overturning this decision following a recommendation to acquit by the public prosecutor as there was no evidence to suggest that the master had any knowledge that the drugs were onboard.

This case illustrates the increasing tendency towards the criminalisation of crew. Clearly, drug smuggling is a major problem which requires vigorous action on the part of law enforcement agencies throughout the world but all too often crewmembers are made an easy scapegoat for activities over which they have no knowledge or control.

The Club applauds this victory for common sense and justice, albeit somewhat belated, which is the result of the persistence and hard work of the member and Captain Laptalo's legal team.

Staff News

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