Standard Bulletin

The Standard

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Board meeting

The last board meeting was held on 9 October in Singapore, and a dinner was held the evening before for the local shipping community. The club was honoured by the attendance at the dinner of Mr Lam Yi Young, Chief Executive Officer of the Maritime Port Authority of Singapore, who addressed the guests. He was preceded by Mr S S Teo, chairman of Standard Asia and a director of Standard Bermuda, as well as being president of the Singapore Shipping Association and chairman of the Singapore Maritime Foundation.

The board had, as always, a number of important matters on its agenda. Among them were:

- **Financial position**
  As reported in our *Standard Bulletin* of 14 September, the club has had a good first half of the year and the free reserves are back to where they were before the financial crisis. The performance since then has continued to be good. Although the later months of the policy year tend to be heavier for claims than the earlier months, the club is strong financially. No supplementary calls are expected for any of the open policy years.
- **Claims**
  We have had several large claims in the past 12 months, after several years with very few. The club has experienced four claims which have or are likely to impact the Pool layer, but fortunately the club's Pool record has until recently been excellent, which will assist in absorbing these losses.
- **Renewal**
  The board considered the club's strategy for the forthcoming renewal and, after a further financial review and taking into account the tough conditions facing many members, decided, as announced in our circular of 5 November 2009, a general increase of 3% for P&I and 15% for defence, along with an increase in the minimum and maximum defence deductible.
- **Investments**
  The board reviewed carefully the long-term strategic asset allocation and adopted a new benchmark of 70% bonds, 25% equities and 5% gold.

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- **Solvency and regulation**
  These topics are always under review by the board and the board is clearly focused on ensuring that the club continues to comply with solvency and other requirements.
- **Rule changes**
  Some proposed changes to the rules were approved by the board and have been submitted to the membership for comment. If approved at a meeting of members in January 2010, they will take effect from 20 February 2010.
- **New offshore rules**
  A meeting of members, which took place at the same time as the board meeting, approved the new stand-alone Standard Offshore P&I Rules. These will provide a clear and concise statement of the cover provided for members operating FPSOs, rigs and other mobile offshore units.
- **Premium collections**
  In difficult trading conditions for many members, greater focus has been put on premium collections. Premiums continue to be paid promptly by virtually every member, and we have had very few collection problems so far. We are well aware, however, that 2010 may be a tougher year for shipowners in some sectors than 2009.

The club's fundamentals are good, allowing it to be well positioned to go into 2010. As always, there are a number of topics under review and a number of areas to which the club needs to pay attention if it is to continue to provide the service and stability that members deserve.

Member forum, New York

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The club's New York forum took place on 12 November. The forum, which takes place every two years, is organised by the Standard Club's New York office for the club's North American members. This year's forum was well supported by the members, with 23 attendees representing a number of our members' organisations, including Maersk Line Limited, General Dynamics, Princess Cruises, Eagle Bulk, Clipper, International Shipholdings, Cemex, Canada Steamship Line, SEACOR and Matson Navigation. The forum provides the members with the opportunity to meet the New York claims handlers with whom they deal with daily. Importantly, it also provides them with an opportunity to meet with London-based colleagues. Brian Glover, Director of Claims, attended and gave a presentation on the club's present financial and claims experience as well as the upcoming renewal. Chris Spencer, Director of Loss Prevention, gave an introduction to the club's loss prevention department and recent initiatives undertaken, including Member Risk Reviews and the Videotel Hazard Series.

Personal injury claims

Amongst the biggest risk exposures for US-trading members are personal injury claims, both because of the expense of each individual claim and the frequency and longevity of such claims. As a result, the forum has always placed an emphasis on developments in personal injury litigation and the morning session was largely given over to discussion on the subject. Topics discussed included the obligation to pay maintenance and cure in Jones Act cases, liability for punitive damages for failing to pay such maintenance and cure, the option of incorporating arbitration clauses into agreements whereby the member pays maintenance to US crew at a higher rate than that agreed with the injured seafarer's union as well as a recent judicial ruling that allowed a seafarer to claim for overtime that he would have earned had he not been injured. This latter topic is of relevance to all members employing Jones Act crew, because the ruling may allow the plaintiff attorney to bring a class action that could allow injured seafarers who have settled claims within the last three years to bring claims for 'lost' overtime.

One session focused on the Medicare, Medicaid and SCHIP Extension Act (MMSEA), which empowers the US government to recover any expenditure incurred by Medicare on medical expenses that should be, or should have been, met by other insurance plans. Discussion on MMSEA covered the identity of the responsible reporting entity (RRE), the mechanism by which a RRE registers under the Act, the time at which the obligation to report arises both for new claims and old claims, the penalties for not reporting and how the MMSEA will affect settlements on personal injury cases going forward.

Pollution – oily water separators

The second area that the forum addressed was pollution. A presentation was given on oily water separator infringements. Notwithstanding significant and well-publicised fines imposed upon shipowners, the number of infringements detected by the United States Coast Guard have remained consistent in recent years, the fines levied are significant and penalties may include prohibiting a shipowner from trading to the United States. The presentation explained the grounds on which the United States can seize jurisdiction for oily water separator infringements, how to deal with an investigation and how best to either avoid or minimise a penalty. It was pointed out that the United States Coast Guard would be responsible for the enforcement of US ballast water laws and compliance with emissions under MARPOL Annex VI. It was also noted that the likely future trend would see oily water separator prosecutions remain at the levels seen recently in addition to which investigations/indictments for ballast water and emission offences would increase in significance.

Pollution – natural resource damages

Whenever oil enters the water, the shipowner from whose ship that oil emanates is responsible, irrespective of fault, for the damage done to the natural environment by that oil. The Natural Resource Damages Assessment is the process by which the damage done is measured and covers remedial action to minimise/remove the damage caused by the discharged oil as well as remedial and restorative costs going forward. The presentation covered the legislative basis for these damages, an introduction to the assessment process and examples of assessments that the guest speakers had been involved with. This issue is of importance to any shipowner trading to US waters as the assessment, when completed, often makes up a significant proportion of the total claim costs of handling a pollution incident.

The 2009 Standard Offshore forums, London and Singapore

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The club's Offshore Forum held in London on 21 October was the best attended yet. Eighty-five attendees enjoyed a half-day seminar at Trinity House, with presentations by industry experts.

One of the main themes to emerge is that decommissioning of offshore oil platforms remains a big issue. The likely bill is put at £18 billion in the North Sea alone, but that figure is probably an underestimate as costs frequently overshoot. Apart from the financial impact, there are serious logistical, health and safety, insurance and PR implications.

In a poll of the audience, some 16% voted "decommissioning" to be the biggest challenge facing the sector over the next 10 years. "Environmental challenges" topped the list, with 39% of participants rating them as their main concern. "Numbers of suitable personnel", which was considered to be the main issue last year, fell from 35% to 14%, no doubt reflecting the impact of the financial crisis on the crewing market.

Similar numbers attended this year's Standard Asia Offshore Forum, which took place at the Shangri-La Hotel, Singapore on 24 November. A seminar was held in the morning followed by a workshop in the afternoon. The seminar addressed topics such as consequential loss in offshore contracts, the role of the marine warranty surveyor and crewing: near miss reporting and leadership. The afternoon's workshop started with a review of how actions taken by members in the immediate aftermath of a major casualty between a FPSO and a supply boat can affect their ultimate liability. The afternoon concluded with an interactive exercise demonstrating how contract conditions and jurisdiction issues also affect the long-term outcome of an incident.

Member and broker reception in Hamburg

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On 17 September, the club hosted a seminar and reception for members and brokers in the German market. John Reily, the club's director of underwriting provided an update on the club's finances, and Chris Spencer, the club's director of loss prevention provided an overview of recent safety and loss initiatives. Dr Johannes Trost from LEBUHN & PUCHTA also gave a talk on the Rotterdam Rules and CNLI.

The seminar was held in the convivial surroundings of the Anglo-German Club in Hamburg. The event was well supported, with about 80 guests from both the shipowning and broking communities.

ANGLO GERMAN CLUB

Standard Asia wins Lloyd's List Marine Insurance Award

Standard Asia won the 'Marine Insurance' award at the Lloyd's List Asia Awards 2009 on 29 October 2009. This is in recognition of the service Standard Asia has provided to the maritime sector in Singapore over the past 10 years.

LEFT TO RIGHT: JOHN LIU, DIRECTOR, ANDREW LIU & CO., SPONSORS OF THE AWARD, ROBERT DRUMMOND, GENERAL MANAGER, CHARLES TAYLOR MUTUAL MANAGEMENT (ASIA) PTE. LTD AND JOHN DYKES, ESPNSTAR SPORTS PRESENTER.

Legal update: the Rotterdam Rules 2009

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A new cargo liability convention (The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea), which is known as the Rotterdam Rules (the Rules), was opened for signature on 23 September 2009. Sixteen states signed, including the United States, Greece, Norway, France and Denmark. The drafting of the Convention was sponsored by the United Nations Commission on International Trade Law (UNCITRAL) and it was adopted by the UN General Assembly on 11 December 2008.

The Rules establish a new liability regime for the multimodal carriage of goods, which includes an international maritime leg. The Rules will come into force one year after they have been ratified by 20 states.

The Rules introduce an innovative legal framework and seek to promote trade by encouraging global uniformity. They are designed to respond to the perceived needs of liner transportation in particular and have been described as a 'marine plus' or 'wet multimodal' convention. Existing conventions that regulate any non-marine leg, such as CMR in respect of road haulage, will not be displaced by the Rules and will continue to be applicable.

When they come into force, the Rules will significantly alter members' exposure for cargo claims. Their provisions are complex and are likely to provoke a flurry of litigation as ship, cargo and shore interests test the extent of their liabilities, limits, defences and recourse. We recommend that all members make themselves familiar with their provisions, consider their contracts of carriage and their contracts with service suppliers.

At present, if members voluntarily contract on Rotterdam Rules terms, then to the extent that they accept liabilities greater than that under the Hague-Visby regime, their P&I cover may be prejudiced. The club cover position will however be kept under close review as the ratification process continues. Widespread adoption will result in the Rotterdam Rules replacing Hague-Visby as the recognised benchmark for contracts of carriage and this will require a review of club rules.

Summary of main provisions

- the carrier's period of responsibility is extended from being 'tackle to tackle' (under the Hague-Visby regime) to 'door to door', i.e. from the time of receipt of the goods until delivery
- the duty to exercise due diligence to make the ship seaworthy has been extended throughout the voyage
- traditional carrier defences have been removed, most notably the exception for negligent navigation or management of the ship
- parties to volume contracts have more freedom of contract
- electronic transport documents are given the functional equivalence of paper bills of lading
- package limits have been increased
- time limit to bring claims is two years from the date of delivery
- jurisdiction and arbitration provisions are only binding if states opt in.

Application of the rules

The Rules will not apply compulsorily to all cargo movements. They will apply to multimodal contracts of carriage with an international sea leg. The place of receipt and delivery must be in different states and at least one of the following must be in a contracting state:

- the place of receipt, or
- port of loading, or
- port of discharge, or
- place of delivery.

What contracts do the Rules apply to?

The Rules regulate the liabilities and obligations of the parties to contracts of carriage, which must provide for carriage by sea and may provide for carriage by other modes of transport. The Rules will be applicable to 'transport documents' such as bills of lading and will also apply to, and avoid some of the legal difficulties with, contracts such as straight or memo bills of lading, or waybills.

In liner trades, the Rules will not apply to charterparties, whether they are time, voyage or slot charters (unless contractually incorporated, say, by way of a new Rotterdam Paramount Clause). For non-liner trades, the Rules will not apply unless a transport document is issued (and there is no charterparty between the parties). For example, the Rules will not apply to a Gencon voyage charterparty where it is the contract of carriage between the owners and the charterer. However, if a Congen bill of lading is issued, the Rules may apply to it.

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Who is a ‘carrier’, performing party or marine performing party?

Under the Rules, the definition of a ‘carrier’ is purposefully not limited to the marine contractual carrier. The carrier under the contract of carriage will be responsible for its entire transportation, including the fulfilment of non-marine legs, e.g. by road or rail. That carrier will also be responsible for the negligent acts or omissions of:

- the master
- the crew
- their employees
- agents, and
- subcontractors.

A carrier may delegate some of its contractual obligations to performing parties or marine performing parties. A carrier will be responsible for the acts and omissions of a performing party who will, say, perform a pure land-based leg of the cargo movement (e.g. road haulage from port gates to warehouse for delivery) or will store the cargo before effecting delivery on the carrier’s behalf. Such a performing party will not be responsible to cargo interests under the contract of carriage.

Marine performing parties can include stevedores, port agents, terminal operators and hauliers who operate exclusively within a port. They will be responsible to cargo interests under the Rules, although they can avail themselves of the carrier’s defences and limits. The carrier’s and marine performing party’s responsibility remains joint and several.

Carriers should continue to ensure that their service contracts allow for a proper allocation of responsibility between carrier, performing parties and marine performing parties. In some circumstances, it may be appropriate to secure sight of stevedores, port and terminal operators’ insurance details.

What is the carrier’s period of responsibility under the Rules?

The period of time for which a carrier is responsible for the goods has been extended from the historical ‘tackle to tackle’ period of the Hague-Visby rules to the period from receipt of the goods to their delivery. Therefore, the carrier may be responsible under the contract of carriage for damage to the cargo that is incurred whilst it is ashore awaiting shipment or collection. This represents a potentially significant increase in risk (although the carrier and the shipper can agree to limit the period of operation of the Rules to the narrower window of ‘loading to discharge’).

In addition to seeking recourse from the carrier, cargo interests have the option of also pursuing any negligent maritime performing parties, which can include stevedores or port operators. Carriers should review their port and stevedore service agreements and, where possible, seek to strengthen any rights of recourse. They should ensure that their contracting partners have appropriate insurance to respond to their liabilities.

What are the carrier’s obligations?

In addition to the obligations familiar to carriers under the Hague-Visby regime to properly and carefully load, handle, stow, carry, keep, care for and discharge the goods, there is an additional obligation to deliver the goods to the consignee. Failure to do so will be a breach of convention. Short delivery and misdelivery claims will amount to a breach of the Rules, but the carrier will retain the right to his defences and limits in both cases. The commercial practice of requiring an appropriate letter of undertaking before delivering cargo without production of a bill of lading is likely to remain (as too will the potential prejudice to club cover).

The carrier will not be responsible for the acts or omissions of customs authorities or third parties (e.g. customs clearance agents), although we recommend that the carrier (or his local agent) ensures that the condition of the goods is accurately recorded when they are either received from or delivered to such authorities/agents.

Under the Hague-Visby rules, a carrier is obliged to exercise due diligence before and at the beginning of the voyage to make the ship seaworthy. Under the Rules, the obligation upon the carrier will be extended to include a continuing duty to exercise due diligence during the voyage. The obligation also extends to the condition of any containers supplied by the carrier in or upon which the goods are to be carried.

When is a carrier liable and who must prove it?

The carrier is liable for loss of or damage to the goods, and for any delay in their delivery, if the claimant proves that the loss, damage or delay took place during the period of the carrier's responsibility. However, the carrier can avoid liability if he can prove that the cause of the loss, damage or delay was not attributable to his fault. For example, the parties may agree that a consignee should be responsible for discharge and cargo that may be damaged during that process. As that damage is not attributable to the carrier, the resultant losses will rest with cargo interests.

Alternatively, a carrier can escape liability if he can prove that certain listed events or circumstances, which bear close resemblance to the Hague-Visby defences, caused or contributed to the loss, damage or delay.

The Hague-Visby rules are silent in respect of delay and therefore the consequences of delay are commonly excluded under bills of lading. However, under the Rules, a carrier is liable for delay if he does not deliver as per the contract of carriage even if there is no physical damage. Such liability for 'pure economic loss' due to delay is subject to a separate limitation regime under the Rules whereby the carrier can limit his liability to 2.5 times the freight payable for the goods delayed. Notice must be given to the carrier (and not just to a marine performing party, performing party or agent) within 21 days of delivery, failing which any resultant delay claim will be barred.

Care should be taken when agreeing delivery dates with shippers. Carriers may not exclude liability for delay or impose lower limits unless their contract meets the requirements to be classified as a volume contract (please see comments below).

One of the most significant differences between the Hague-Visby and Rotterdam Rules regimes is the loss of the 'nautical defence'. Under Hague-Visby, the carrier and the ship were not responsible for loss or damage arising from the act, neglect or default, of the master, mariner, pilot or the servants of the carrier in the navigation or management of the ship. This defence is entirely removed from the Rules and the carrier is explicitly liable for the acts of the master, crew, his employees, agents and subcontractors. This represents a significant increase in risk exposure for carriers.

What package limits will apply?

The concept of package limitation has been retained, albeit with significantly increased levels. Again, this represents an increased risk to carriers. A comparison between the Rules and earlier conventions is instructive:

	Weight	Per Package
Hague Rules	-	(£100 max)
US COGSA '36	-	$500
Hague-Visby Rules	2 SDRs per kg	666.6 SDR
Hamburg Rules	2.5 SDRs per kg	835 SDR
Rotterdam Rules	3 SDRs per kg	875 SDR

The operative weight for the use of limitation is the gross weight of the goods that are the subject of the claim and that the relevant number of packages is that enumerated in the contract.

The right to limit for loss of, damage to or delay of the goods is lost if the claimant proves that the loss resulting from the carrier's breach was attributable to a personal act or omission with intent to cause such loss or recklessly and with knowledge that such loss would probably result. Similarly, limitation in respect of delay is lost if the delay is the result of a similar personal act or omission.

What time limit will apply to claims under the Rules?

The Rules introduce a two-year time limit to bring a claim. The time limit is operative from the date of delivery of the goods (or the last day on which the goods should have been delivered) not the date of discharge. However, the Rules allow an additional 90 days to institute indemnity actions.

What is the effect of deviation under the Rules?

Under the Rules, deviation shall not deprive the carrier of any defences or limitation (unlike unreasonable deviations under the Hague-Visby regime) unless the carrier's conduct is sufficient to deprive him of package limitation (see comments above). Liberty to deviate clauses should still operate successfully, but they will continue to be construed narrowly.

Therefore, in the absence of an express contractual agreement, ships should continue to take the usual and customary route, and any departure from this will amount to a breach of contract unless it is to save life or to save property if reasonable.

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Are the Rules applicable to deck cargo?

Deck carriage will be categorised as permissible if:

(a) required by law, or
(b) the goods are in containers or vehicles that are fit and the ship's decks are specially fitted for such carriage, or
(c) the carriage is permitted under the contract of carriage or pursuant to custom/usage.

If a carrier is in breach of these three permissible scenarios then it is likely that it will be found liable for loss and damage, and will lose his usual defences. Package limitation will still apply unless the parties had expressly agreed to carry the cargo under deck; in that case, the carrier will also lose the right to package limitation.

For (a) and (c), the special risks inherent with deck carriage rest with the shipper. This is the case in respect of all ship types and also applies against the shipper even if the bill of lading/transport document is silent. These defences can only be invoked against a third-party holder of the bill of lading/transport document if there is an express declaration that the goods are on deck or an express liberty clause to permit such carriage.

In practical terms, the aim is to make carriers strictly liable for losses exclusively caused by non-permitted deck carriage. Therefore, it is recommended that members continue to ensure that a full liberty clause (expanded to exclude delay claims for deck cargoes) is incorporated into their contracts of carriage. Members should also expressly and accurately declare all actual deck carriage upon their contracts of carriage.

Do the Rules deal with dangerous goods?

If goods are (or reasonably appear likely to become) during the carrier's period of responsibility an actual danger to persons, property or the environment, the carrier may decline to receive or load them and may take reasonable measures, including unloading, destroying or rendering them harmless.

There are stringent obligations upon the shipper when goods, by their nature or character, are or reasonably appear likely to become a danger to persons, property or the environment. The shipper must notify the carrier of the dangerous nature or character of the goods, failing which the shipper will be liable for losses that flow from the failure to inform. There is an obligation upon the shipper to mark or label the goods so as to comply with all laws or regulations (throughout the entire journey), failing which the shipper is strictly liable.

What are volume contracts and why are they important?

A volume contract is a contract of carriage that provides for carriage of a specified quantity of goods (including, for example, a minimum, a maximum or a range) in a series of shipments during an agreed period of time.

The parties to a volume contract have much more freedom to contract on terms of their choosing. The parties may increase or decrease their rights and obligations, including applicable defences, burden of proof, package and time limits. In order to derogate from the Rules, a volume contract must meet four requirements:

(1) it must contain a prominent statement that it derogates from the Rules

(2) it should be individually negotiated or prominently specify what sections contain derogations from the Rules

(3) the shipper must be given an opportunity to contract on terms complying with the Rules, and

(4) any derogation must not be incorporated by reference from another document.

Derogation from the Rules will bind third parties if:

(1) the contract bears a prominent statement recording the derogation, and

(2) if the third-party consents.

Certain provisions of the Rules cannot be contracted out of, namely:

(1) the 'breaking limitation' regime,

(2) the shipper's obligations to provide information and appropriate marks in respect of dangerous cargo, and

(3) the carrier's obligation to exercise due diligence to make and keep the ship seaworthy and to properly man, equip and supply the ship.

Jurisdiction and arbitration

The Rules contain complex provisions in respect of jurisdiction and arbitration agreements. As noted above, a ratifying state would need to positively opt in to these provisions by declaring an intention to be bound by them. The Rules limit the acceptable places for dispute resolution such that popular exclusive jurisdiction clauses may become toothless. This is likely to lead to more forum shopping, a race to establish substantive jurisdiction and uncertainty as to which court or tribunal will be properly seized of jurisdiction. These provisions, if adopted, will also drive changes in states' and regional laws relating to enforceable exclusive jurisdiction clauses.

Under the Rules, for most contracts of carriage, the shipper has a free choice where to sue the carrier before a competent court in:

(1) the carrier's domicile

(2) the place of receipt or delivery, or

(3) the port of loading or discharge.

Carriers may not start pre-emptive proceedings or seek to rely on exclusive jurisdiction clauses.

The original parties to a volume contract have greater freedom of contract and can have exclusive jurisdiction clauses if several requirements are met. In order to bind a third party or consignee, additional requirements, including notification, must be met.

Under the Rules, parties can agree to resolve their disputes by arbitration. However, the place of arbitration is not fixed. The arbitration proceedings may be instigated at the option of the claimant in one of a number of places:

(1) as agreed by the parties

(2) the carrier's domicile

(3) the place of receipt or delivery, or

(4) the port of loading or discharge.

The parties do not have certainty as to where their disputes will be heard and will not know what substantive and procedural arbitral laws will apply to any disputes under the contract of carriage. There is also a clear risk of multiple concurrent litigation and inconsistent awards. Exclusive arbitration agreements in volume contracts are given primacy and will bind third parties if specific limited requirements are met.

After a dispute arises, the parties have freedom to agree any competent court or to arbitrate in any place. It may be advisable to seek to agree substantive jurisdiction in a neutral forum.

Legal Update:

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Loss of nautical fault defence because of master's motive and conduct

TASMAN ORIENT LINE CV v NEW ZEALAND CHINA CLAYS AND OTHERS (2009) NZCA 135 (the Tasman Pioneer)

In April 2009, the New Zealand Court of Appeal held that a master's "outrageous conduct" did not fall within the 'nautical fault defence' of error in navigation or management of the ship, under Article IV Rule 2(a) of the Hague-Visby Rules. This article examines the reasoning behind this judgment and its practical implications.

The facts

On 1 May 2001, the Tasman Pioneer left Yokohama, Japan, bound for Busan, South Korea. The ship was behind schedule. The master decided to take the ship through a narrow passage to shorten the journey rather than taking the usual route. Shortly after changing course to transit the passage, the ship grounded. Water entered the ship's forward ballast tanks and cargo holds, causing a 10 degree list to port. The ship's pumps were activated. The court found that on refloating, the master did not alert the Japanese Coastguard or seek other assistance. He ordered the ship to continue steaming at full speed away from the incident before anchoring in a sheltered bay. The charts were altered to show a false course. The master's initial explanation of the casualty was that the ship had hit an unidentified floating object. He counselled the deck officers to lie to the Japanese Coastguard about the circumstances of the casualty and downplayed the extent of the damage to the ship. The truth eventually emerged.

The first instance decision

The shippers claimed damages from the carrier, the sub-charterer of the ship, arguing that if the master had promptly notified the authorities of the casualty, the salvors would have been able to save their on-deck cargo from being wetted or inundated. The carrier denied liability for the loss by relying upon Article IV Rule 2(a) of the Hague-Visby Rules, contending that the damage had resulted from the 'act, neglect or default of the master… in the navigation or in the management of the ship'. The Judge held that the misconduct of the master following the grounding was to be regarded as an 'act, neglect or default…in the navigation or in the management of the ship'. However, because the master did not act in good faith to preserve the safety of the ship, her cargo and crew, the carrier was not entitled to rely upon Article IV Rule 2(a).

The Appeal Court decision

The carrier appealed against the decision. It submitted that the Judge was right to hold that the conduct of the master was an 'act, neglect or default in the navigation…of the ship' but was wrong to impute an obligation of good faith. By a majority of two to one, the Appeal Court dismissed the appeal. It reached the same decision as the lower court by a different means, i.e. not relying upon the requirement of good faith but instead focusing on the construction of the Hague-Visby rules. Describing the conduct of the master following the grounding as "outrageous", the majority concluded that such behaviour, carried out for his own selfish purposes and wholly at odds with the carrier's obligations, is not conduct 'in the navigation or in the management of the ship' within the meaning of Article IV Rule 2(a).

The dissenting judgment

The dissenting judgment by Fogarty J rejected this approach. He emphasised that Article IV Rule 2(a) "adopted a common law as distinct from a continental code approach, inasmuch as it emumerates exceptions rather than stating a principle" and should be interpreted so as to avoid the shipowner from becoming the insurer against loss caused beyond the shipowner's control. He also argued that the meaning of the phrase 'act, neglect or default of the master' includes intentional conduct and that there was nothing in Article IV Rule 2(a) that suggests that its application depends on the motives of the master.

Implications of the judgment and the Rotterdam Rules

The Appeal Court's decision suggests that, in future, the circumstances of cargo losses resulting from the master's navigation or management decisions may need to be examined more closely. The application under local law of the 'nautical fault defence' contained in Article IV Rule 2 (a) may depend on the master's motives when navigating and managing the ship and it will therefore be necessary to investigate the master's conduct in order to ascertain whether his response to a casualty has been appropriate. This will undermine certainty and uniformity for all parties.

Given that "there can be many circumstances following a shipping calamity where there may well be some kind of compromise by the master motivated in part by an effort to protect his or her career,"[1] a discernable and specific motive may be hard to come by. Such subjectivity will doubtless lead to more litigation, more uncertainty and increased costs; ultimately it is the carrier who will be prejudiced as a result.

The court found that the master acted out of selfish reasons. His actions were not done at the request of the carrier, albeit the carrier was found to be liable for the resultant damage. This case may be an example of the court providing a party that has suffered a loss with a means of recourse not otherwise available to it. The facts are unusual but do provoke questions as to whether the current result would be different if this voyage had been subject to the Rotterdam Rules. Under those Rules, the 'nautical fault defence' would not be available to a carrier, who would therefore face claims from cargo interests for loss of, damage to and delay of such cargo coupled with increased package limits.

The case is currently subject to an appeal before the New Zealand Supreme Court. Until such time as the Rotterdam Rules are ratified, the 'nautical fault defence' remains available to carriers. However, whilst the defence may be vulnerable in some jurisdictions and subject to the carrier's ability to prove the exercise of due diligence, generally, it remains as an effective exclusion of carrier's liability.

[1]Fogarty J in his disserting judgment

Club news

Standard Cargo

A Guide to the Carriage of Steel Cargo

December 2009

Setting the standard for service and security

standard-club.com

New publication: Standard Cargo

The club has produced a guide to the storage and transport of steel on board ship amid concerns that important cargo-handling skills are being eroded by modern practices. This is the first of a new series of *Standard Cargo* guides to be produced by the club. The publication follows feedback from club members. It is aimed mainly at masters, cargo officers, shore-side superintendents and chartering managers.

We are producing these guides as there are serious issues concerning the carriage of cargo. The questions that the club keeps being asked indicate a real need to provide the knowledge to members. The steel cargo guide includes advice on where steel should be stored, how and in which direction it should be secured, packing materials, legal aspects and the prevention of common problems such as water ingress, moisture and damage whilst handling. It also spells out the cargo officer's duties during loading.

Further *Standard Cargo* guides are planned to cover other areas that require specialist knowledge. They will draw on our experience and analysis, and will be produced in collaboration with industry experts.

Video Hazard Series

The Standard Club has joined forces with Videotel to produce a set of 10 short video clips, **Hazards Series 1**. Made with the assistance of Inmarsat, the MCA and numerous shipping companies, each clip shows in graphic, and sometimes shocking, detail what can happen when the correct procedures and working techniques are ignored when carrying out a task. The same task is then shown being undertaken in the approved manner and with the right equipment.

Aimed primarily at cadets, deck and engine crew, students at maritime colleges and training officers, the clips are eye-catching and confront the potential severity of the results of some easily avoidable mistakes. Shot using real crew doing real work, these films concentrate on training points and pull no punches in delivering them to the audience.

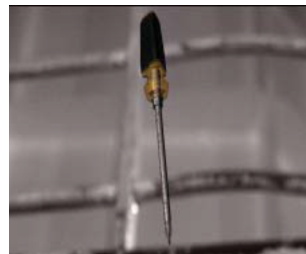
These video clips support the club's ongoing campaign to encourage a safety culture at sea. Most accidents are preventable, especially when they involve crew taking short cuts by ignoring basic rules. If these clips save a single life then the DVDs will have been worthwhile.

The full series covers the topics:

- Working Aloft
- PPE – Head Protection
- PPE – Foot Protection
- PPE – Eye Protection
- Mooring
- Housekeeping – Doors
- Housekeeping – Slips, Trips and Falls
- Manual Handling
- Hot Work
- Enclosed Spaces

MANUAL HANDLING

WORKING ALOFT


HEAD PROTECTION

EYE PROTECTION

Copies for your ships can be purchased directly from Videotel:

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cchapman@videotelmail.com

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Staff Changes

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Staff News

Standard House

After 27 years in their current location, the managers' London agents, Charles Taylor & Co Ltd, are moving to new offices. The club has bought a freehold property in central London and this has been substantially modified and refurbished, ready for occupation in January 2010. The new office – Standard House – will accommodate CTC's P&I activities as well as CTC plc's head office and various other CTC business activities.

Standard House was originally built in 1929 and is in Essex Street, very near the Royal Courts of Justice and right in the centre of London.

The move of most staff will take place on 11 January 2010. The details of the new office are:

Charles Taylor & Co Ltd
Standard House
12 - 13 Essex Street
London WC2R 3AA

Tel: +44 20 3320 8888 Fax: +44 20 3320 8800

The direct dial telephone numbers of most staff members will change. A list of all direct telephone numbers is set out below:

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Bass, James	+44 20 3320 8843	Driscoll, Karen	+44 20 3320 8893	Lerede, Fabien	+44 20 3320 8898	Rowe, John	+44 20 3320 2200
Bean, James	+44 20 3320 8811	Ellis, Colin	+44 20 3320 8846	Jennings, Barbara	+44 20 3320 8830	Seleman, Fatima	+44 20 3320 8844
Beard, Claire	+44 20 3320 8880	Esdale, Mark	+44 20 3320 8884	Jones, Jennifer	+44 20 3320 8853	Skinner, Justin	+44 20 3320 8841
Bew, Janet	+44 20 3320 8857	Ford, Mark	+44 20 3320 2316	Joubert, Olga	+44 20 3320 8822	Skinner, Marion	+44 20 3320 8877
Breitenbach, Sulene	+44 20 3320 8883	Fowles, Colin	+44 20 3320 8850	Kelsh, Emma	+44 20 3320 8819	Smalley, Michelle	+44 20 3320 8860
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Buss, Kate	+44 20 3320 8875	Gallagher, Louisa	+44 20 3320 8840	Máté, Suzie	+44 20 3320 8839	Smith, Karina	+44 20 3320 8829
Capewell, Stuart	+44 20 3320 8849	Glover, Brian	+44 20 3320 8823	Matthews, Stephen	+44 20 3320 8816	Spencer, Chris	+44 20 3320 8807
Cassell, Iain	+44 20 3320 8803	Gower, Barry	+44 20 3320 8826	McNamee, Peter	+44 20 3320 2282	Steer, Derek	+44 20 3320 2287
Chandaria, Nilam	+44 20 3320 8865	Groom, Alistair	+44 20 3320 8899	Mills, Christine	+44 20 3320 8868	Steer, Michael	+44 20 3320 8833
Charlton, Andrew	+44 20 3320 8818	Grose, Jeremy	+44 20 3320 8835	Moore, Kieron	+44 20 3320 8855	Steer, Robert	+44 20 3320 8897
Clarke, Tony	+44 20 3320 8894	Halford, Jill	+44 20 3320 8810	Murdoch, Eric	+44 20 3320 8836	Stephenson, Philip	+44 20 3320 8825
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Cross, James	+44 20 3320 8801	Hawkins, Vicky	+44 20 3320 8874	O'Donnell, Kevin	+44 20 3320 8828	Valeeva, Nara	+44 20 3320 8890
Croucher, John	+44 20 3320 8879	Hines, Julian	+44 20 3320 8812	O'Donnell, Ursula	+44 20 3320 8813	Van, Jackie	+44 20 3320 8870
Cunningham, Andy	+44 20 3320 8808	Holmes, Kimberley	+44 20 3320 8869	Okoye, Shermine	+44 20 3320 8809	Watson, Sam	+44 20 3320 8862
Curtiss, Craig	+44 20 3320 8892	Hooper, Anne	+44 20 3320 8852	Oneto, Camilla	+44 20 3320 8804	Webb, Darren	+44 20 3320 8878
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The Standard Club

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