The Standard

STANDARD BULLETIN

SETTING THE STANDARD FOR SERVICE AND SECURITY

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125 years 1885~2010

FINANCIAL RESULTS

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IN THIS ISSUE

01	Financial results
02	The club at a glance
04	Medicare reporting requirements in the US
06	Class action arbitrations
07	Legal update: Collisions
08	Koehler v. Bank of Bermuda
09	Croatian regulations
09	Pay to be paid principle
10	Safety and loss prevention publications
11	Standard Offshore forums
11	Standard Club events
12	Staff news

BOARD MEETING

Report and accounts for the year ended 20 February 2010

"We have much to be proud of this year, but, at the same time, we face tough challenges now and ahead. This year marks our 125th anniversary, and it is pleasing that it coincides with our having a record level of tonnage insured and a record level of free reserves to support the business" said Ricardo Menendez, the club chairman, in his chairman's statement this year. "However, we have to operate within an increasingly rigorous regulatory environment and work towards a new, tougher solvency regime."

The club's annual report and accounts were approved at the board meeting on 14 May, and the financial highlights are set out below. The club has grown significantly over the past 12 months and the total entered tonnage now stands at 110m gross tons. Following this year's successful renewal, premium income for P&I and Defence is projected at $266m in the current year. The overall surplus on the year to 20 February 2010 was $67m, largely the result of an investment return of 18%, but underwriting was marginally in surplus also.

continued on page 2

RESULTS FOR THE YEAR ENDED 20 FEBRUARY 2010

	2010 US$m	2009 US$m
Calls and premiums net of reinsurance	202	174
Total claims net of reinsurance and operating expenses	(201)	(132)
Balance of technical account for general business	*1*	*42*
Net investment return	66	(92)
Excess/(shortfall) of income over expenditure for the year	*67*	*(50)*

Outstanding claims liabilities

Estimated known outstanding claims net of all recoveries	292	282
Incurred but not reported claims (IBNR)	136	110
Total estimated claims liabilities	*428*	*392*

Funds Available For Claims

Open policy years	211	192
Closed policy years	217	200
Free reserves	243	176
Total balance sheet funds	*671*	*568*

The club experienced more large claims in the last 12 months, bringing to an end the club's lucky run on the Pool and using up the large Pool surplus that the club had built up. Underlying claims, however, remained stable.

New director

At its recent meeting, the board was pleased to welcome Andreas Martinos of Minerva Marine Inc to the board, strengthening the club's representation from Greece.

Outlook and strategy

The financial results reported now and the results of the recent renewal are an affirmation of the club's aims as stated in its business plan, which the board reviews on a periodic basis.

These aims include:

- to consider as a priority the maintenance of strong financial characteristics, both independently and by comparison to the club's industry competitors
- to be selective as to the members which the club insures and to consider, as a priority, the quality and not the quantity of its members; however, the club is open to growth in a controlled way from good quality ship owners
- to give members the maximum level of service, and to assist them to resolve their insurance and liability issues by being as approachable, flexible and pro-active as possible, consistent with the club's financial security and with fairness between members
- to insure only those shipowners who operate their ships safely and to a good standard, and the club will vet, through management and ship audits, the quality of operation of new and existing members.
- to promote safety and loss prevention, which includes seeking to assist members with good quality loss prevention advice
- in addition to insuring conventional and ocean-going shipping, the club will continue to be a leader in the specialist trades, insuring a wide range of risks of a P&I nature, including those in the offshore sector

The club is well-placed to face the challenges of the future. These include tougher solvency requirements under the Solvency II regime, due to come into force in two years time. This change to all insurance businesses operating in the European Union is not just concerned with how much money the club needs to hold against its business risks, but impacts on every aspect of the way in which the club operates, including in particular the way that risk is approached and the club's governance arrangements. While in themselves the requirements are not extraordinary, the amount of work involved in compliance and proof of compliance is huge and will be a major challenge over the next two years.

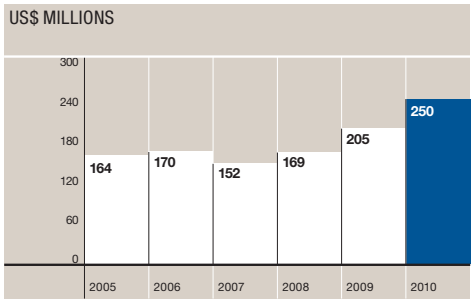
Other challenges include the continuing scourge of piracy and potentially onerous new legislative requirements. The current economic outlook is also challenging, and it is very unlikely that the excellent investment results of last year can be repeated, but there is reduced risk in the club's investment portfolio compared to previous years.

The shipping downturn did not seem to affect significantly the claims picture, but the liability environment remains uncertain. The club's members operating in the tanker and container sectors have yet to see any significant upturn in their markets, but the slow recovery from recession seems to be leading to a welcome reduction in Defence class claims from the very high level of activity seen in the past couple of years.

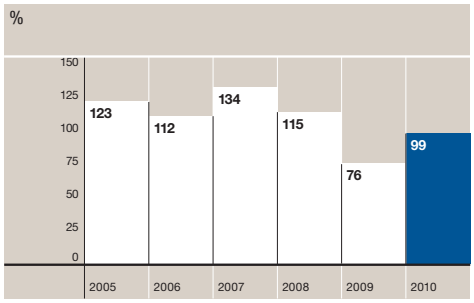
Overall, the club's position is robust. The club's business is well-diversified both geographically and across types of shipping operations, and its membership is of high quality. It will continue to offer its members a strong combination of financial security and high quality of service.

THE CLUB AT A GLANCE

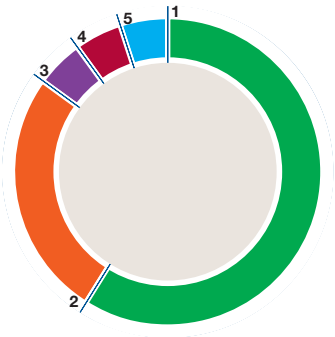
PREMIUM INCOME



COMBINED RATIO



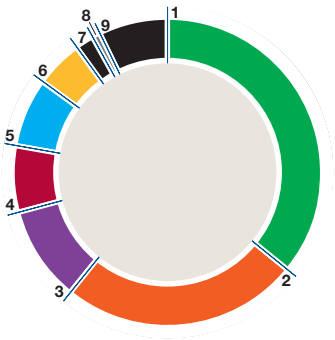
ASSET ALLOCATION



1	Bonds	59%
2	Equities	26%
3	Alternative assets	5%
4	Gold	5%
5	Cash	5%

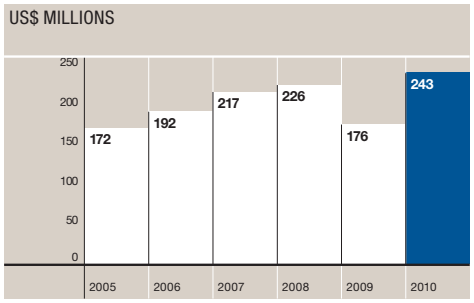
CLAIM BY TYPE

2009/10 POLICY YEAR

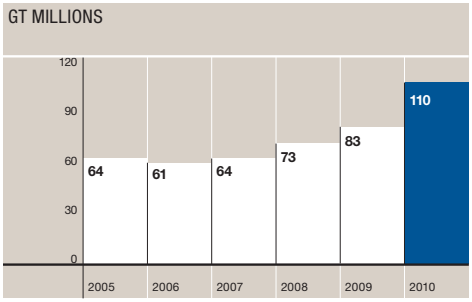


1	Cargo	36%
2	Personal injury	25%
3	Collision	10%
4	Pollution	7%
5	Fines	7%
6	Fixed and floating objects	5%
7	Damage to hull	2%
8	Wreck	1%
9	Other	7%

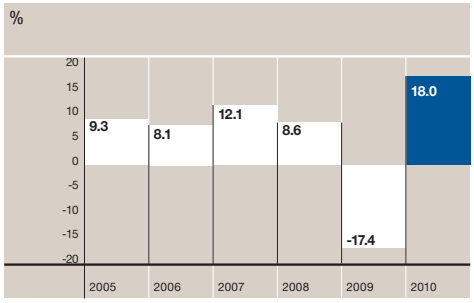
FREE RESERVES



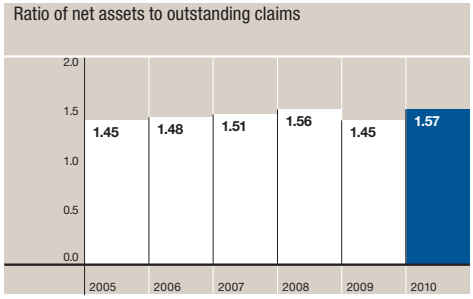
TONNAGE



INVESTMENT RETURN

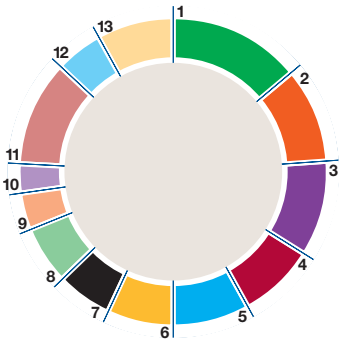


CLAIMS COVER



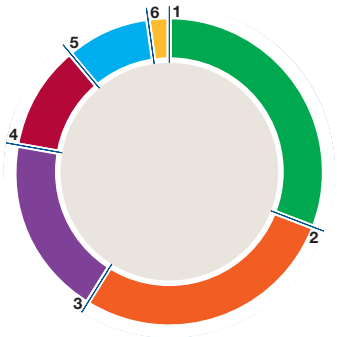
MEMBERS

OWNED TONNAGE



1	USA	14%
2	Greece	10%
3	Italy	10%
4	Canada	8%
5	Germany	8%
6	United Kingdom	7%
7	Japan	6%
8	Singapore	6%
9	Switzerland	4%
10	Republic of Korea	3%
11	Rest of Europe	11%
12	Rest of Asia	5%
13	Rest of World	8%

SHIP TYPE



1	Tanker	31%
2	Container & general cargo	28%
3	Dry bulk	19%
4	Offshore	11%
5	Passenger & ferry	9%
6	Other	2%

MEDICARE REPORTING REQUIREMENTS IN THE UNITED STATES – BEWARE OF MMSEA!

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It happens every day: a person is injured in an accident, whether on the job, on the highway, at home or as a passenger. By settlement, court decision or otherwise by law, the injured person eventually recovers damages, including medical expenses. What if the injured person is 'Medicare-eligible' and Medicare pays for some of the medical services pending the outcome of the lawsuit or claim? Or what if the injured person is not presently 'Medicare-eligible' but will receive payments from the settlement or verdict for the period after the person becomes 'Medicare-eligible'?

In fact, the answers to such questions have been, or should have been, of concern since 1980 under existing US statutes. However, the concern is now heightened as a result of the Medicare, Medicaid and SCHIP Extension Act (MMSEA), which is now in force in the United States. MMSEA is designed to make it easier for the US government to recover payments for accident-related injuries when the accident victim also receives payments for those injuries from other entities. It is estimated that MMSEA will save $6bn a year in medical care payments made by Medicare to accident victims who recover damages from other entities.

Under MMSEA, any entity that handles and pays claims to 'Medicare-eligible' persons must register with the Center for Medicare and Medicaid Services (CMS) and become a Responsible Reporting Entity (RRE). RREs must then file quarterly reports listing the claims that are pending as well as the payments made. The claims database that is established as a result of this reporting and filing system will allow CMS to track and determine whether Medicare has made, or may have to make, payments that should be recouped from the person responsible for handling and paying the accident-related medical expenses.

There are stiff monetary penalties for persons who fail to report payments of claims that MMSEA requires to be reported: $1,000 per day per claimant. These penalties are in addition to penalties already in place, which can be imposed for failure to provide prompt payment or reimbursement to Medicare and which include double damages.

As described below, the obligation to register as an RRE rests with the shipowner member of the club.

Accordingly, if a member has claims in the US by 'Medicare-eligible' persons, or is likely to have them, the member should register as an RRE. If you are such a member and you have not yet registered, you should seek legal advice immediately. The Standard Club and its New York office can assist you in locating appropriate counsel.

WHO IS 'MEDICARE-ELIGIBLE'?

Persons aged 65 years or older are 'Medicare-eligible'. Persons younger than 65 years old may also be 'Medicare-eligible' in certain circumstances defined in MMSEA and other relevant statutes. Therefore, those members who own and operate passenger vessels will undoubtedly face claims by 'Medicare-eligible' persons.

WHO MUST REGISTER AS A RRE?

The registration and reporting requirements of the MMSEA apply to the entity deemed to be the RRE, which by definition includes self-insurers, liability insurers (such as CGL carriers) and no-fault insurers (such as workers' compensation carriers). Most recently, CMS has reversed course and stated that if a liability insurer would be liable but for the deductible, the liability insurer is the RRE, not the insured.

In any event, pursuant to the rules of the Standard Club and other clubs in the International Group, shipowners and other entities covered under those rules are obliged to 'pay first' and then be indemnified by the club on risk. Hence, when members make payments to 'Medicare-eligible' persons, the members, not their clubs, are the RREs obliged to register with CMS and report the payments.

While the club's US members who are or may become obliged to register as RREs have taken steps to do so, it is possible that a non-US member may face a claim from a longshoreman or other claimant who is 'Medicare-eligible'. However, a person does not have to register unless and until there is a claim to report. The entity that handles and pays the claim is obliged to determine whether the claimant is 'Medicare-eligible'.

The obligation to register as a RRE may not be delegated; however, there are companies that will administer compliance with MMSEA on behalf of a RRE once the RRE is registered with the CMS.

WHAT IF A SETTLEMENT OR VERDICT REQUIRES PAYMENTS OF ACCIDENT-RELATED EXPENSES IN THE FUTURE?

If a person is not 'Medicare-eligible' at present, but the settlement or verdict requires payment of accident-related expenses in the future when the person will have become 'Medicare-eligible', the best practice is to create a 'Medicare Set Aside' (MSA), which may require government approval. The club and its legal correspondents can and will of course work with the member and the attorney for the claimant to set up a MSA when appropriate.

WILL MMSEA WORK?

MMSEA casts a very wide net. Self-insureds as well as liability insurers of every stripe (workers' compensation, automobile liability insurers, CGL insurers, insurers of household premises, to name a few) are paying claims to 'Medicare-eligible' persons every day. Information on hundreds of thousands of claims will have to be evaluated. Although all concerned, including CMS and the relevant Medicare offices, are attempting to implement and comply with MMSEA, it will take time for procedures to be worked out by the various affected parties. Indeed, given the practical difficulties caused by the sheer number of claims, one industry group has recently requested a further delay in implementation.

It would be, however, foolhardy not to respond to MMSEA with the utmost seriousness. The penalties for non-compliance are severe. Moreover, the present circumstances of record budget deficits and the estimate of $6bn that can be recouped from persons making payments to 'Medicare-eligible' accident victims provide ample incentive for the US government to find a way to make MMSEA work. Indeed, on 1 December 2009, the US filed suit in Alabama against all parties; plaintiffs and defendants, plaintiffs' attorneys, self-insureds and insurers to recover amounts Medicare contends it is entitled to recoup from a $300m personal injury settlement made in 2003.

The club will continue to monitor developments in this area and will keep members advised.

"There are stiff monetary penalties for persons who fail to report payments of claims that MMSEA requires to be reported."

‘CLASS ACTION ARBITRATIONS’ NOT ALLOWED WHERE ARBITRATION CLAUSE IS SILENT

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On 27 April 2010, the United States Supreme Court issued its decision in *Stolt-Nielsen S.A. v. Animalfeeds International Corp., 559 US (2010)* and held that an arbitration clause is not broad enough to include ‘class action’ arbitrations if it is silent as to whether they are allowed or not allowed. The arbitration clause at issue was the clause in the Vegoilvoy form of charter. A ‘class action’ is a remedy available in a court proceeding by which one plaintiff represents a ‘class’ of similarly situated persons and brings a claim on behalf of all of them against one or more defendants. It is a proven remedy in cases where a wrong has arguably been committed but the damage to any one plaintiff is, compared to the costs of proceeding, not sufficient to justify the risk of bringing the claim. By allowing the ‘class representative’ to bring an action on behalf of all similarly situated persons, a ‘class action’ allows such alleged wrongs to be addressed and decided that might otherwise not be. Many consumer contracts in the US now contain arbitration clauses, and the US courts have been struggling with the issue whether ‘class actions’ should be allowed in arbitrations under such consumer contracts.

The instant case, however, was a dispute under a maritime charter party. Stolt Nielsen was guilty of anti-trust law violations. Animalfeeds, one of Stolt’s charterers, sought in the arbitration to recover damages from Stolt as a result of Stolt’s anti-trust law violations. Animalfeeds then asked that the arbitration be expanded to become a ‘class action’ in which it would bring claims on behalf of all similarly situated persons who had contracted with Stolt. The parties eventually submitted the issue – whether the clause allows ‘class action arbitrations’ – to the panel of arbitrators. The arbitrators interpreted existing case law, including a 2003 decision by the Supreme Court, and ruled that a ‘silent’ arbitration clause should be interpreted to allow ‘class action arbitrations’ in the absence of any intent to preclude them. The district court vacated the award, the court of appeals reinstated it, and the Supreme Court has now vacated it.

The decision will most certainly be welcomed favourably by the maritime industry. It is one less thing to worry about when fixing and performing charterparties.

However, the Supreme Court’s reasoning will doubtless leave lawyers scratching their heads. The US Arbitration Act lists four grounds for vacating an award. In addition, the court many years ago referred to ‘manifest disregard of the law’ as a ground for vacating an award. The lower courts and parties have struggled ever since with the meaning and application of the ‘manifest disregard of law’ standard, in particular, whether it is a separate, non-statutory basis for attacking an arbitration award or whether it is ‘simply’ a ‘gloss’ on the statutory grounds. The legal community believed that this case would finally give the Court the opportunity to clarify this legal point. However, the Court, declined to take the opportunity presented by this case to clarify the meaning and application of ‘manifest disregard of the law’ and yet nevertheless gratuitously added that the manifest disregard standard – that the panel knew the applicable legal principle, appreciated the principle was controlling and ‘wilfully’ refused to apply it – had been met in this case if the Court had decided to apply it.

Instead, the Court based its decision on one of the four statutory grounds in the Arbitration Act, which allows a court to vacate an award “[w]here the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter was not made”. The Court does not quote the full text of the ground and simply refers to it as the “exceeding their powers” ground. Until now, this ground was interpreted narrowly to apply to awards in which the arbitrators decided issues beyond and outside those included in the agreement to arbitrate or which were rendered against parties who were not parties to the agreement.

“Because we conclude that there can be only one possible outcome on the facts before us, we see no need to direct a rehearing by the arbitrators.”

Here, the parties themselves submitted that precise issue – whether the clause permitted class action arbitrations – to the arbitrators to decide. The arbitrators decided that issue. It is difficult to see how the arbitrators “exceeded their powers” simply by deciding the issue submitted to them by the consent and stipulation of the parties. In effect, the Court reviewed the substantive ruling of the panel and reversed it on legal grounds as an incorrect and impermissible interpretation of the arbitration agreement in the Vegoilvoy form, i.e. that the arbitrators exceeded their powers by deciding the issue in a certain way. Moreover, the Court held that there was no need to send the case back to the panel to decide in light of the direction provided by the Court’s opinion, stating: “Because we conclude that there can be only one possible outcome on the facts before us, we see no need to direct a rehearing by the arbitrators.”

Whatever the Court intended, and however correct its decision may be on the merits, its decision will no doubt embolden losing parties to seek judicial review of the reasoning and the conclusions of arbitrators instead of accepting them as ‘final’ and binding.

LEGAL UPDATE – COLLISIONS: THE PROBLEM WITH AN ARRAY OF DEFINITIONS

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The recent decision in the *Western Neptune v St Louis Express* ([2010] 1 Lloyd's Rep. 158) highlights the importance of considering which liability regime should be pursued in collision cases. Difficulties arise from the fact that there is no uniform definition of what constitutes a 'collision' with towed objects.

FACTS OF THE CASE

In September 2007, the *Western Neptune* was undertaking a survey in the Gulf of Mexico. She was towing a spread of 10 streamers and six gun arrays (the array). Each streamer extended for 4.34 miles astern of the vessel with a total width of 1,080m and depth of 12m.

Western Neptune was supported by three other vessels. Two were also towing gun arrays and were positioned off the port side of *Western Neptune*. A third vessel, *Furore* was positioned ahead of *Western Neptune*; its main function was to prevent interference from other vessels by contacting them on VHF.

In addition to normal navigation lights, *Western Neptune* exhibited three (restricted manoeuvrability) lights, the highest and lowest being red, and the middle white. So far as the array was concerned, there were buoys at the aft end of every streamer and at the forward end of the outer six streamers. Each buoy was fitted with a blue strobe light and a radar reflector. That apart, there were no lights between the stern of *Western Neptune* and the end of the streamers more than 4 miles astern.

During the early hours of 24 September 2007, the *St Louis Express* collided with the array when she crossed approximately 4 miles astern of *Western Neptune*, causing damage in the region of $25m.

Prior to the collision, *Western Neptune* was on a course of 225 degrees making 4 to 5 knots. *Furore* made VHF contact with *St Louis Express* stating that *Western Neptune*'s seismic convoy was ahead and requesting a 'safety box' of 3 miles ahead, 3 miles on each side and 6 miles astern.

Shortly thereafter, *St Louis Express* altered course to starboard in order to avoid another vessel, *Eagle Subaru*. At 02:42, *St Louis Express* began a slow alteration to port. By 02:50, she had entered the 'safety' zone around the convoy, heading 315 degrees. She continued her swing and steadied on a heading of 290 degrees at 02:53. She remained on that heading until collision.

'COLLISION' FOR THE PURPOSE OF INSURANCE POLICIES

In *Bennett Steamship Company v. Hull Mutual Steamship Protecting Society* [1913] 3 KB 57, the Court construed the meaning of 'collision' in the context of damage to fishing nets under the terms of the usual form of Lloyd's policy and concluded:

"whenever any part of the tackle of a vessel is being used in connection with the vessel, although it may be outside the ambit of the hull, as the anchor or a boat towing astern or working ahead to warp the vessel, it may just as well be said to be a part of the vessel when there is a collision with it as if it were still on board the vessel itself...nets, however, are not a part of the ship in that sense, nor are they things which it is necessary for her to have and without which she could not prudently put to sea…[I]t would be straining the language to say that the collision in this case with the nets was a collision with the ship."

This case examined whether there was a collision for the purposes of recovery under the terms of the insurance policy and found that the towed nets were not part of the vessel for the purposes of determining whether there was a collision. The established practice following this case is for the owner to separately insure fishing nets or have the nets included in the schedule of the policy.

'COLLISION' FOR THE PURPOSE OF THE COLLISION REGULATIONS

In construing Rule 3(g) of the Collision Regulations as to whether the *Western Neptune* was "engaged in a towing operation which severely restricts the towing vessel (and the tow) in its ability to deviate from its course", the Court was asked to decide whether the array formed part of the vessel from the perspective of the Regulations. The court adopted the view of the Elder Brethren that:

"From a practical point of view the tow always has to be treated as part of the towing vessel for the purposes of collision avoidance since it has no life or being outside of the towing vessel and is unable to take any form of unilateral action. *Western Neptune*'s array was a tow, part of which was on the surface, must therefore be considered an integral part of *Western Neptune* herself."

CONCLUSION

Whether there is a collision depends upon what basis a claimant seeks to found liability for the damage suffered. While the towed array is treated the same as a towed vessel under the collision regulations, it may not be treated in the same way under a Lloyd's Policy. The *Western Neptune* decision highlights the importance of giving careful consideration to the coverage in place and the basis on which any subsequent liability is founded.

ENFORCEMENT OF JUDGMENTS IN NEW YORK: KOEHLER V. BANK OF BERMUDA LTD.

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Most participants in the marine industry are aware that last year in *The Shipping Corp. of India v. Jaldhi* (585 F. 3d 58 (2d Cir. 2009)), the federal court of appeals in New York overruled prior cases and held that prejudgment attachments of electronic funds transfers being processed by intermediary banks in New York City are no longer possible under Rule B. Maritime creditors lost a powerful, cost-effective procedure to secure and enforce their claims.

In *Koehler v. The Bank of Bermuda Ltd.* (12 N.Y. 3d 533 (2009)), however, the New York State Court of Appeals made it easier to enforce foreign judgments in New York by holding that a judgment creditor may obtain an order directing a foreign garnishee (for example, a bank) holding assets of a foreign judgment debtor to turn over such assets to the judgment creditor, if the foreign garnishee is subject to the personal jurisdiction of the New York Court. The remedy in *Koehler* is a far cry from the pre-*Jaldhi* practice of attaching electronic funds transfers; nevertheless, it should be considered by any creditor seeking to enforce a foreign judgment.

Such a 'turnover' proceeding is a post-judgment remedy, unlike the Rule B prejudgment attachment of property to obtain security for an eventual judgment. In *Frontera Resources Azerbaijan Corp. v. State Oil Company* (582 F. 3d 393 (2d Cir. 2009)), the Federal Court of Appeals in New York confirmed that there must exist either an independent basis of personal jurisdiction or a prejudgment attachment, in order to enter a judgment upon a foreign arbitration award. During the years when attachments of electronic funds transfers were allowed, hundreds of shipping companies registered to do business in New York in order to avoid the disruption such attachments caused. In light of *Koehler*, any company that registered to do business in New York solely to avoid attachments of its dollar transfers should carefully review with its attorney whether it should deregister. Equally, creditors holding foreign judgments should check to see whether the debtor is registered to do business in New York.

Interestingly, it is not necessary to have an independent basis of jurisdiction to enter a judgment in New York upon a foreign judgment. In *Lenchyshyn v. Pelko Electric, Inc.* (723 N.Y.S. 2d 285 (A.D. 4 2001)), the court held that a judgment may be entered in New York upon a foreign judgment, pursuant to New York's Uniform Foreign Country Money Judgments Recognition Act, despite the lack of an independent basis for exercising personal jurisdiction and the absence of any assets within the State.

Similarly, a federal statute permits a judgment in one US District Court to be registered as a judgment in any other US District Court, irrespective of the existence of grounds for personal jurisdiction.

This would be of particular interest in cases involving Forward Freight Agreements and other contracts that call for disputes to be resolved in the English Courts, rather than in arbitration. Additionally, a creditor who holds a foreign arbitration award could confirm the award as a foreign judgment, and then as a New York judgment, despite an absence of grounds for personal jurisdiction in New York.

A post-judgment turnover proceeding is available in both the federal and state courts and in both maritime and non-maritime cases. It is available with respect to property in the possession of the judgment debtor itself. The judgment debtor may be ordered to turn over such property, even if the property is located abroad. However, before obtaining such an order, the judgment creditor must show that the judgment debtor actually possesses property. In other words, the court may not simply order the debtor to pay the debt, but only direct the debtor to turn over specific property or funds that it has been shown to possess.

"creditors holding foreign judgments should check to see whether the debtor is registered to do business in New York."

A turnover proceeding is also possible with respect to the judgment-debtor's property held by a third-party garnishee. The garnishee must be identified and, in addition to a showing that the garnishee in fact possesses the debtor's property, there must also exist a basis upon which to exercise personal jurisdiction over the garnishee. If the garnishee is subject to the Court's personal jurisdiction, it must comply with the Court's orders, notwithstanding that the property that is the object of the order is located beyond the Court's territorial jurisdiction.

Personal jurisdiction over a foreign bank or corporation is not established solely by the presence in New York of a subsidiary or affiliate, if the foreign and local offices are different corporate entities. In that event, something more will have to be shown, such as that the local branch or office is an agent of the foreign entity. In *Koehler*, the judgment creditor argued that the Bank of Bermuda's subsidiary in New York was an agent for the Bermudan entity, and that this relationship was sufficient to establish personal jurisdiction here over the latter. The parties litigated that and other issues for some 10 years, until the Bermudan bank finally consented to the jurisdiction. Therefore, there was no substantive holding whether in fact the subsidiary's activities established a sufficient agency relationship.

Another basis for holding a local subsidiary's presence here is sufficient to establish personal jurisdiction over a foreign entity is that the entities themselves disregard their separate corporate integrity. In *Yayasan Sabah Dua Shipping SDN v. Scandinavian Liquid Carriers Ltd.* (335 F. Supp. 2d 441 (S.D.N.Y. 2004)), a Rule B attachment

continued from page 8
served upon the New York branch of a Cayman Islands bank was upheld, notwithstanding the defendant's bank account was located in the Cayman Islands branch, because "the Cayman Islands branch is a paper bank entirely controlled and managed by Danske Bank's New York operation". *Yayasan* involved a prejudgment attachment and branches, not separate corporate entities. Nevertheless, similar reasoning conceivably may be used to find a basis on which to exercise personal jurisdiction in a turnover proceeding against a foreign bank.

There are other post-judgment remedies available to judgment creditors in New York. Judgment creditors may serve a restraining notice upon potential garnishees, which restrains the recipient from disposing of any judgment debtor's assets that it may possess. Additionally, creditors may serve questionnaires, known as information subpoenas, upon potential garnishees. These devices do not require a prior showing that the garnishee possesses the judgment debtor's property. They are regularly used by collection lawyers on a 'mass-produced' basis. Given that these remedies, like a turnover proceeding, are directed against garnishees personally, we see no reason why such devices could not be used to find and restrain property located abroad, as long as the garnishee is subject to personal jurisdiction in New York.

Given New York's importance as a banking centre, creditors who hold an arbitration award or judgment issued in a foreign country should investigate the possibility of enforcing the claim in New York despite the demise of prejudgment attachments of dollar transfers under Rule B.

CROATIAN REGULATIONS

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The Croatian authorities have introduced revised Notice of Arrival reporting regulations for ships calling at Croatian ports. The regulations require all tankers of 150 gross tons or more and other ships of 300 gross tons or more to participate. In addition to other obligations regarding ISPS code compliance, ballast water management, waste management and dangerous goods reporting, the new regulations require confirmation of insurance cover for wreck removal.

Enquiries by the International Group suggest that the port authorities may be prepared to rely on evidence of entry in an International Group club to satisfy this obligation, but that is not officially confirmed. Members who encounter any difficulties with providing evidence of P&I cover to the satisfaction of the Croatian authorities should get in touch with their usual contact at the club.

PAY TO BE PAID

'Pay to be paid' is a fundamental principle of P&I cover. A member's cover is one of indemnity, that is, the member must actually pay a claim made against him by a third party before seeking reimbursement from the club.

Under English law, specifically the Third Party (Rights Against Insurers) Act 1930, a third party claimant could proceed directly against an insurer if the assured was insolvent. However, in stepping into the assured's shoes the claimant could not be in a better position than the assured under the insurance contract. The House of Lords clarified that contingent indemnity provisions (such as pay to be paid) would bind a claimant in such circumstances but observed that liability insurers should not rely upon such pay to be paid provisions when faced with claims for damages for death or personal injury. For many years it has been the practice of the club not to rely upon such arguments in dealing with the personal injury claims that our members face. The club amended its rules in February 2009 to expressly waive the pay to be paid provision in respect of crew claims.

Also, the clubs have sometimes agreed to accept direct action as a means of securing balanced and reasonable rights, defences and limitations for shipowners in the negotiation of several international conventions. Examples include the international regimes for pollution, both for tankers and for bunkers from other ships.

English insurance law has now been updated with the passing of the Third Party (Rights Against Insurers) Act 2010. The new Act streamlines claims by avoiding the need for duplicate proceedings, gives claimants new rights to obtain certain insurance information and removes specific policy defences (e.g. failure by an insolvent assured to provide information). Further, the Act states that the rights transferred from an insolvent assured to a claimant are not subject to any pay-to-be-paid requirements. However, the Act retains pay to be paid in the context of marine insurance other than in respect of claims for death or personal injury. Other policy defences (for example following non-payment of premium) and rights of set-off remain available to insurers.

English law now codifies the practice and procedure of the clubs in dealing with claims for death or personal injury following the insolvency of a member, whilst recognising and retaining pay to be paid for other risks.

SAFETY AND LOSS PREVENTION PUBLICATIONS

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THE HUMAN ELEMENT: A GUIDE TO HUMAN BEHAVIOUR IN THE SHIPPING INDUSTRY

An essential new book for the whole shipping industry.

The club became involved in developing *The Human Element: a guide to human behaviour in the shipping industry* as we felt it would be an important industry initiative that would benefit all involved in the shipping industry.

Based on a wide range of consultations with maritime organisations, the guide was produced by organisational psychologists gs partnership, for consortium partners UK Maritime and Coastguard Agency, BP Shipping, Teekay Marine Services, along with the Standard Club.

Aimed at everyone in the shipping industry, the guide explains the fundamental aspects of human behaviour, which together constitute what the commercial maritime sector calls 'the human element'. It makes clear that the human element is neither peripheral nor optional in the pursuit of a profitable and safe shipping industry. The guide clearly shows that managing the human element must take place simultaneously at all levels of the industry.

Analysis of continuing shipping disasters has increasingly implicated the human element. The loss of life, the impact on company profits and credibility, and the vast environmental damage that can result from the loss of even a single ship remain clear. The guide offers insight, explanation and advice to help manage the human element more effectively, more safely and more profitably.

Copies can be downloaded from the Standard Club's website www.standard-club.com or purchased from The Stationery Office online at www.tsoshop.co.uk or by emailing customer.services@tso.co.uk

STANDARD CARGO: A GUIDE TO THE CARRIAGE OF OVERSIZED CARGO – YACHTS

The Standard Club recently published *Standard Cargo: A Guide to the Carriage of Oversized Cargo – Yachts*.

This issue is the first of two *Standard Cargo* publications that deal with items of cargo that are an unconventional shape or size, are difficult to handle or are difficult to secure, and that may require specialist knowledge in order to ensure safe carriage. Such items include yachts, large reels, pieces of machinery, tanks and vehicles. These are often carried on flatrack containers on deck on both container ships and on general purpose ships. In this issue, we give general guidance and advice that applies to all 'oversize' cargo and then concentrate on the carriage of yachts. In the next issue of *Standard Cargo*, we will deal with the various other types of unconventional items. This is not a guide for the securing or lifting of heavy lift cargo.

A copy of the publication can be downloaded from www.standard-club.com or by contacting Chris Spencer, director of loss prevention.

STANDARD OFFSHORE FORUM

13 OCTOBER 2010 – LONDON

STANDARD ASIA OFFSHORE FORUM

4 NOVEMBER – SINGAPORE

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The club's annual Offshore Forums offer a unique opportunity for shipowners involved in the offshore oil and gas industry to meet and discuss current industry issues with oil companies and contractors in an informal environment. The Forums are intended to stimulate informed debate amongst participants, and are open to both members and non-members of the Standard Club and their marine contractor and oil company clients.

We will hold forums in both London and Singapore during 2010.

This year's Standard Offshore Forum will take place in London on Wednesday 13 October. The forum will be held in the historic surroundings of Trinity House, headquarters of the Corporation of Trinity House, which is the General Lighthouse Authority for England, Wales, the Channel Islands and Gibraltar. A seminar will be held at 3pm, followed by drinks and dinner from 6.30pm.

This year's Standard Asia Offshore Forum will take place on Thursday 4 November at the Shangri La Hotel, Singapore. A seminar will be held at 9am, followed by lunch from 1pm.

Participants in previous Forums have found them both informative and enjoyable. If you are interested in attending either of the Offshore Forums, please contact Barbara Jennings on +44 20 3320 8830 or barbara.jennings@ctcplc.com

STANDARD CLUB EVENTS

JUNE

14 to 17 June 2010, Member training week – London

SEPTEMBER

15 September 2010, Member and Broker seminar – Hamburg
30 September 2010, Member and Broker seminar – Rotterdam

OCTOBER

8 October 2010, Standard Bermuda board meeting and AGM – Bermuda
13 October 2010, Offshore Forum – London

NOVEMBER

18 November 2010, Member Forum – New York

STAFF NEWS

LEROY LAMBERT HONOURED BY TULANE LAW SCHOOL

LeRoy Lambert, President, Charles Taylor P&I Management (Americas) Inc., is being honoured by Tulane Law School as the 18th John W. Sims Distinguished Admiralty Practitioner in Residence.

Based in New Orleans, Louisiana, Tulane Law School is the 12th oldest law school in the United States, established in 1847 and is part of Tulane University, one of the most highly regarded and selective independent research universities in the United States.

The Maritime Law Center is a division of Tulane Law School and was created in 1982. Its maritime law programme is among the best regarded in the world and it offers its students specialised study in admiralty and maritime law.

The John W. Sims Distinguished Admiralty Practitioner in Residence programme brings a distinguished maritime attorney or shipping executive to Tulane each year to spend time exchanging ideas with students and faculty. The purpose of the visitorship, which lasts two days, is to supplement the university's coursework in maritime law by bringing an experienced practitioner to the campus to meet students in small groups to discuss maritime law, its practice and the maritime legal profession.

UNDERWRITING

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