The Standard

STANDARD BULLETIN

SETTING THE STANDARD FOR SERVICE AND SECURITY

March 2011

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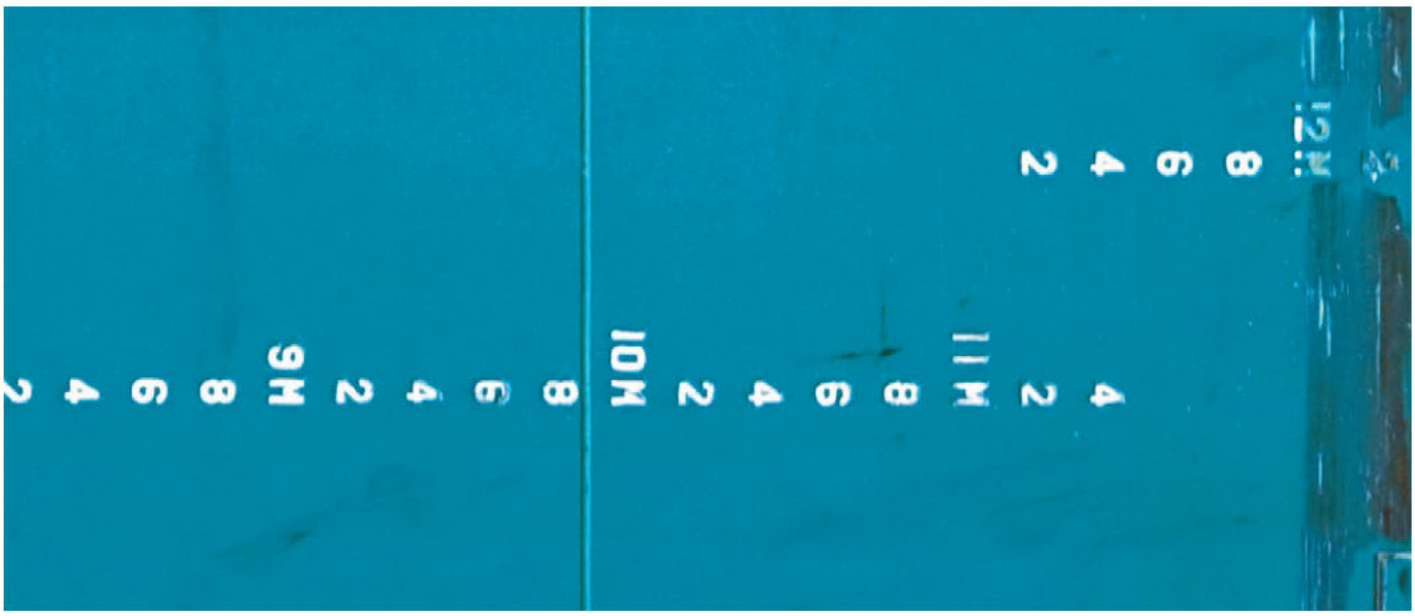
CLUB NEWS

RENEWAL 20 FEBRUARY 2011

The club had a very satisfactory renewal this year adding some additional tonnage from existing members and also securing the entry of a small number of good new members. Total tonnage increased by 11% from 110m gt at the 2010 renewal to approximately 122m gt. The total premium income for the 2011/12 policy year is expected to be around $270m.

BOARD MEETING REPORT

- The board met on Tuesday 25 January in Paris, with meetings of its Nomination and Audit and Risk Committees taking place the day before.
- The board noted the retirement from the board of Teddy Bernadino and Francis Blanchelande, and thanked them for their valuable service to the club.
- Among the many matters considered by the board and its committees were three claims for the board's consideration in the exercise of its discretion, a detailed review of the club's business risks, review of solvency and Solvency II progress, progress with members' renewals and renewal of the club's reinsurances, review of the underwriting and financial performance and investments.
- The board set standard limits of cover for the forthcoming 2011/12 policy year, which remain the same as in the current year.
- The board also held a strategy session at which it reviewed the club's objectives, the strategy that the club should follow to pursue those objectives and the club's business plan. The club's strategy will form a part of the directors' report to members contained in the annual report.



CORPORATE GOVERNANCE

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Over the past year, the club has significantly modernised its corporate governance arrangements. The club and, in particular, its board, have always followed good and appropriate practices, but as a private company, has operated in a fairly informal way in relation to governance policies. While the club has prospered in the past under informal arrangements, it became clear that modern governance practice required a greater degree of formality.

One important aspect of corporate governance is how the board is constituted and operates. The board has adopted a new governance policies statement, and this addresses some key aspects of the board's functions, including:

- the role of the board
- how the board is constituted and board membership
- the election and re-election of directors
- the role of the chairman and deputy chairmen, and terms of office
- matters reserved for the board, as opposed to those delegated to the managers
- proceedings at board meetings
- board committees, their terms of reference and proceedings
- board performance evaluation.

One aspect mentioned above is board membership. The normal qualification to be a director is that the individual must be an owner of a ship entered in the club, or a director or full-time executive of a company that has a ship entered in the club. However, as well as the current 20 non-executive shipowner directors, there are also two non-executive directors who are resident in Bermuda, and two manager directors.

The board's Nomination Committee has the task of identifying and reviewing potential new director candidates and recommending them to the board. The board has always ensured that it is constituted so as to represent the diversity of the club's membership. In this respect, the following guidelines are among the matters that the committee and board will take into account when considering candidates:

- Director appointments are personal and are not just representative.
- Director candidates must have the appropriate skills to be a director of an insurance company and be able to effectively participate in the board's work.
- The board should reflect the club's make-up by geographical distribution of the club's membership, ship types, shipping trades and size of members.
- The members constituting the club's very largest 'shareholders' by way of premium or tonnage may expect to have priority to a seat on the board.
- Directors are normally the owner, principal, chairman or chief executive of the company concerned, with only rare exceptions – a director is expected to be someone at the highest level within his company with responsibility for running the business as a whole.
- No company has a right to a seat on the board, even if, or especially if, it has traditionally or frequently been so represented.
- Generally, members should not expect to be represented on the board until they have shown commitment to the club by several years' membership in the club.

Directors must retire and stand for re-election (if still eligible) every three years. There is no maximum time that a director may serve on the board, but in practice, there is a reasonable degree of turnover, which ensures that the board is refreshed, while it is also important that the board does not lose too much experience through enforced retirement.

A document containing a summary of the club's corporate governance policies can be found on the website at: http://www.standard-club.com/TheClub/page.aspx?p=63

THE IMPACT OF SANCTIONS ON P&I COVER

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The rule changes proposed for the 2011 policy year in our circulars dated 16 December 2010 and 6 January 2011 were approved by members on 26 January 2011. These could have serious implications for members, even when members are themselves 'innocent' of breaching sanctions.

Club cover is supported by the International Group Pooling Agreement and reinsurance coverage bought from the worldwide commercial reinsurance market. The clubs and their reinsurers must comply with local laws and ensure that they do not provide cover to sanctioned entities. The rule changes, in part, have been required by the reinsurers under these reinsurance arrangements, and are necessary to ensure that claims do not put the clubs or reinsurers in breach of sanctions, which could have serious consequences for the club and their reinsurers and for the membership as a whole.

Sanction regimes continue to develop (see our article on the Ivory Coast). We summarise here some of the important implications for club cover caused by sanction regimes:

- Under some legal regimes, a member's sanctionable conduct may automatically put the club in breach of sanctions.
- If a member's sanctionable conduct causes the club itself to be in breach of sanctions then cover automatically ends in relation to the ship in breach, but not sister or associated ships (rule 17.2(5)); there has to be a link between the member's conduct and the club being held to be in breach. The mere fact alone that a member himself is in breach of sanctions does not of itself terminate or prejudice club cover. It is therefore not the case that ANY breach of sanctions will automatically terminate cover.
- The rules are not limited to US sanctions or those levelled against Iran; they apply in respect of any sanction regime.
- If risks are reinsured or shared with other insurers, under rule 1.3.3: 'the member is entitled to recover from the club only the net amount actually recovered under such reinsurance… whether or not the member has notice of such reinsurance, its terms, or the identity of the reinsurers'.
- Local legal rules may prevent a reinsurer from paying a claim. If so, the member's claim will be reduced proportionately.
- Our rules also contain an express provision dealing with reinsurance recoveries (including recoveries from parties to the pooling agreement) in respect of sanctions (rule 6.22 or 6.15 under the Standard Offshore Rules). If the club is unable to recover part of a claim from reinsurers or parties to the pooling agreement because of sanctions legislation, then the member's claim against the club is also reduced.
- A member's sanctionable conduct may mean that a reinsurance recovery is prejudiced and reduced. However, reinsurance recoveries may also be reduced if a reinsurer (or party to the pooling agreement) is unable to pay due to local sanction regimes.
- Important: It should be noted that there does not need to be a causative link between the member's conduct and any reduction in recovery from reinsurers/pooling partners. If a reinsurer or pooling partner cannot pay a claim due to a threat of thus being in breach of sanctions then the member's claim for reimbursement is written down (even if the member is 'innocent' and is not himself in breach of sanction regimes). We believe that these rules put into words that which would happen in any event. Simply put, if a reinsurer cannot pay, then the member's claim will be written down.

Our comments above are not exhaustive. Members are recommended to read our dedicated Sanctions Bulletin of December 2010. Members should continue to exercise diligence in respect of commitments with countries or individuals who may be subject to sanction regimes. Specific local legal advice should be taken.

RECENT EUROPEAN SANCTIONS AGAINST THE IVORY COAST

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European Council Regulation 25/2011 was signed and came into force on 15 January 2011. It applies to all contracts/agreements entered into on or after this date, and does not apply retrospectively.

APPLICATION

The Regulation applies:

(i) within the territory of the Community
(ii) on board any ship under the jurisdiction of a member state
(iii) to any person inside or outside of the Community who is a national of a member state
(iv) to any legal person, group or entity that is incorporated or constituted under the law of a member state, and
(v) to any legal person, group or entity doing business within the Community.

The Regulation will not apply to a non-EU parent company purely by reason of the fact that it has an EU subsidiary (if the parent company has no EU nationals and if it acts outside the EU, without any involvement from the EU subsidiary). It is however important to consider the degree to which an EU-based subsidiary is 'involved' with the non-EU-based parent company.

EFFECT

The effect of the Regulation is that funds and economic resources belonging to, owned, held or controlled by the natural and legal persons specifically designated under the Regulation are frozen. In addition, no funds, financial assets or economic resources may be made available directly or indirectly to or for the benefit of those persons.

SANCTIONED ENTITIES

The Regulation expressly lists the natural and legal persons who are listed and they include:

- the Director-General of the Autonomous Port of Abidjan
- the Autonomous Port of Abidjan
- the Autonomous Port of San Pedro
- Espoir Marine Terminal (Petroci Holding) a.k.a the National Petroleum Operations Company of the Ivory Coast
- the Ivorian Refining Company (SIR)
- together with banks, oil companies and other commodity companies (and individuals).

A full list can be found in the Annex to the Regulation at:

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:011:001:017:EN:PDF.

PROHIBITIONS

The Regulation operates as an asset freeze. It is not an express prohibition on trade. It does not limit participation in particular trades (such as oil and gas industries) akin to the US and EU sanctions against Iran. However, it is important to note that the Regulation also restricts the release or provision of all *'economic resources'* owned or controlled, directly or indirectly, by the listed persons. This is an absolute prohibition and even payment into a blocked account is prohibited. The Regulation also prohibits activities where the object or effect of which is to circumvent the other prohibitions. The best course, therefore, is for no payment of any kind to be made.

'FUNDS' AND 'ECONOMIC RESOURCES'

The definitions of 'funds' and 'economic resources' under the Regulation are drafted in wide terms.

Economic resources include *'assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but which can be used to obtain funds, goods or services'*. Accordingly, a ship would fall within the definition of an 'economic resource'. Therefore, chartering a ship to a named person or entity would be a breach of the Regulation.

Funds are defined under the Regulation as *'financial assets and benefits of every kind, including but not limited to… (e) credit, right of set-off, guarantees, performance bonds or other financial commitments…'*. This is likely to include club letters of security or bank guarantees issued in favour of a named person or entity.

Given the very wide definition of economic resources and funds, the safest course is for members not to enter into any new contracts with the named people/entities.

PAYMENTS

Payments, unless authorised in advance, by an EU Member to the named entity directly would clearly amount to a breach of the Regulation.

It is unlikely that the club would be able to reimburse a member in respect of payments made to discharge a P&I liability to a named entity or person. The authorities may argue that the initial payment would not have been made if there had not been insurance in place and that funds are being made available indirectly to the named person by the club.

The Regulation does not include any blanket prohibition on trading to the Ivory Coast and therefore the trade there is not illegal; however, each particular transaction (e.g. payment of port dues, provision of security, etc.) needs to be considered in turn to determine whether there has been a breach of the Regulation or risk thereof.

DEROGATIONS

There are two important derogations to the prohibition on making funds (etc.) available to the listed persons:

(a) funds (etc.) may be made available where those were due under contracts that were concluded or arose prior to the date of the asset freeze. Any such funds will be frozen once they arrive in the listed person's account; and
(b) the prohibition does not give rise to a liability if the natural or legal person who made the funds available did not know, and had no reasonable cause to suspect, that their actions would infringe the prohibition.

PENALTY

The Regulation requires member states to establish penalties. The current position on penalties is unclear. Under UK law, the penalties may include imprisonment (for up to seven years on conviction on indictment or up to six months on summary conviction) and/or a fine (unlimited on conviction on indictment and up to £5,000 on summary conviction).

PRACTICAL ADVICE

In relation to EU members and nationals, payments of monies to the ports of Abidjan and San Pedro, as well as other sanctioned entities, are clearly in breach of the Regulation. Consequently, should a claim result in the Ivory Coast then the club will not be able to pay monies directly or indirectly to any entity that may be designated under the sanctions. Furthermore, the club will not be able to issue security or arrange for the provision of a bank guarantee to designated entities. This may lead to delays.

Whilst there may be significant pressure from charterers to trade to the Ivory Coast, the provision of a letter of indemnity (which may appear to absolve owners of any liability for claims or costs that may arise when trading there) is unlikely to absolve the owner from liability under the Regulation. Also, 'fronting agreements', whereby non-EU entities offer to pay monies to sanctioned entities on behalf of an EU-based entity in return for later reimbursement, are also likely to be caught by the Regulation.

The issue of stowaways is an on-going problem that has yet to be addressed and must be dealt with on a case-by-case basis. There may be an increased risk of stowaways from the Ivory Coast. This may cause additional delays to ships and may present problems under the Regulation for ships trading in the area.

PORT STATE CONTROL INSPECTIONS, DETENTIONS, PROCEEDINGS AND FINES – NEW REGULATIONS ON SHIP INSPECTIONS AT SPANISH PORTS

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The aim of this article is to briefly summarise the new regulations that apply to Spanish ports, to comment on the use of guarantees and the typical procedure following a deficiency being found.

On 23 December 2010, the Spanish Government enacted Royal Decree 1737/2010, which incorporates EU Directive 2009/16/CE into domestic law. The aim of the new regulation is to ensure that all ships entering Spanish waters and ports comply with the minimum safety and security requirements set out in the EU Directive.

Below is a brief summary of the main provisions:

APPLICATION

- The regulations apply to all ships calling at Spanish ports and/or anchoring zones and their crew. Ship inspections are not limited to the port area and can also be performed in Spanish waters.

RISK PROFILES

- The harbour master will inspect a ship based on its risk profile, which is determined according to the following criteria: type and age of ship, inspections record of the flag country, classification societies and the inspection record of the shipowner in question. Following the application of these criteria, a high, normal or low risk profile will be attributed to the ship.
- The harbour master will determine which ships must be subject to an inspection (high-risk ships) and will select other ships that may be subject to an inspection (low and normal-risk ships). Priority will be given to inspect ships that do not call frequently in EU ports.

FREQUENCY OF INSPECTIONS

- The frequency of inspections will be influenced by the risk profile of the ship. A harbour master will inspect all high-risk ships if they have not been inspected within the previous six months; all normal-risk ships if they have not been inspected within the past 12 months; and all low-risk ships if they have not been inspected within the previous 36 months.
- Additional inspections can be carried out regardless of the time elapsed since the last inspection. A harbour master may inspect any ship taking into account the priority factors such as classification issues, information from another member state, or any form of non-compliance with applicable regulations. Alternatively, factors such as previous detentions, cargo problems or other deficiencies can be taken into account.

DENIAL OF ENTRY INTO SPANISH PORTS

The harbour master has the power to refuse entry to any anchorage in Spanish waters to ships black-listed under the Paris Memorandum of Understanding (MOU) and arrested on two occasions during the last 36 months, or ships grey-listed under the Paris MOU and arrested on two occasions during the last 24 months.

APPEAL

The denial of entry to a port or a detention may be appealed to the General Directorate of the Merchant Navy (GDMN) in Madrid. However, the appeal will not suspend the detention of the ship.

GUARANTEES

A guarantee will be required to allow a ship to sail once detained. The guarantee must be provided in the form of cash, a bank guarantee or an insurance bond. The form and wording of the guarantee is not negotiable, as it is determined by local law. The procedures are overly bureaucratic. However, a detention can be lifted quickly if cash security is given. The procedure is usually slower when the security is to be provided via a bank guarantee, as the banking procedures and especially the Spanish administration's system for the verification of signatures is slow. Shipowners often put up cash security for speed. However, this can be substituted for a bank guarantee or insurance bond at a later date.

PROCEEDINGS BY THE MARITIME ADMINISTRATION

Briefly the procedure is as follows:

- Upon receipt of the formal notification of the commencement of the proceedings, the harbour master grants the shipowner 15 days to submit a defence.
- After a period that may take several months, the Harbour Master Office will issue a proposed resolution, usually a fine, and sometimes clean-up or other costs. At this stage, further defence allegations may be submitted.
- The proceedings will then be forwarded to the GDMN in Madrid, which will issue the final resolution. In the majority of cases, the GDMN will confirm the fine proposed by the harbour master. This process is usually concluded within 12 months of commencing proceedings.
- On issuing the final resolution, the GDMN will grant a period for voluntary payment. If payment is not received then the security may be enforced. The time taken for enforcement is unpredictable, but it usually takes several months.
- Any appeal of the final resolution first has to be made to the state's General Secretariat for Transport, prior to a further appeal being possible through the Spanish courts.

The above is a brief summary of the inspection regime in Spain. There has been recent publicity suggesting the Spanish authorities have increased the number and magnitude of fines. Spain is perceived to be stricter for inspections, detentions and fines than other European ports and it is one of the few European nations that impose fines for Paris MOU breaches rather than simply insisting on rectification or repair prior to departure.

However, despite a stricter inspection regime, the number of inspections in Spain has actually been decreasing since 2006. Details of inspections, detentions and bannings are published publicly and can be found on www.parismou.org. The fines imposed can be high, especially in cases relating to pollution and shipowners should be aware of this and always co-operate when inspectors come on board.

LEGAL UPDATE: 'THE CENDOR MOPU' – INHERENT VICE AND PERILS OF THE SEA

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GLOBAL PROCESS SYSTEMS INC & ANOR V SYARIKAT TAKAFUL MALAYSIA BERHAD [2011] UKSC 5

In a decision handed down on 1 February 2011 the Supreme Court held that for the defence of inherent vice to succeed, the intrinsic nature of the subject matter insured must be the sole cause of loss or damage suffered. There must be no intervention by any fortuitous external accident or casualty.

The case involved a jack-up rig, the 'Cendor Mopu', which was insured for US$10 million under an All Risks policy incorporating the Institute Cargo Clauses (A) of 1 January 1982. The rig was transported from Galveston, USA, to Lumut, Malaysia, where the unit was to be deployed in the offshore Cendor Field. The policy was subject to specified exclusions, one of them being inherent vice which is also an exclusion prescribed by section 55(2)(c) of the Marine Insurance Act 1906. The rig consisted of a watertight working platform which could be jacked up and down on three 312ft tubular legs each weighing 404 tons. It was towed on an unmanned barge with its legs extending 300 feet into the air. On the evening of 4 November 2005, having passed the Cape of Good Hope, the rig's starboard leg was lost at sea just north of Durban. The remaining two legs fell off in quick succession the following evening. The legs were lost as a result of fatigue cracking caused by the repeated bending of the legs due to the pitching and rolling motion of the barge as it was towed through the sea in conditions that were within the range that could reasonably have been contemplated for the voyage. The rig owner claimed for the loss of the three legs under the insurance policy but this was rejected by the insurers.

The trial judge in the Commercial Court found that the cause of the loss was inherent vice within the meaning of the policy and that the insurers were not liable to indemnify the owners. The decision was appealed however and the Court of Appeal disagreed with the trial judge. The court concluded that the proximate cause of the loss was not inherent vice, but was in fact an insured peril, being a 'leg breaking wave' which constituted a peril of the seas. The Court of Appeal narrowly applied the application of the inherent vice exception by saying that, in order for the exception to be relied upon, it must be shown that the weather conditions encountered by a ship were bound to occur rather than being merely reasonably foreseeable.

The case was appealed to the Supreme Court. The five Supreme Court justices concluded that the loss was not caused by the intrinsic nature of the rig but by an external fortuitous accident or casualty of the seas, this being the pitching and rolling motion of the barge as it was towed. This constituted a peril of the seas and was therefore an insured peril under the policy. Indeed, the Supreme Court took a more restrictive view of inherent vice than the Court of Appeal, stating that the inherent vice exception can only apply in circumstances where there has been no intervention by any fortuitous external accident or casualty, no matter how probable the loss may be (i.e. where the intrinsic nature of the subject matter insured has been the sole cause of the loss). This, they said, was what common sense dictated and what commercial people would expect.

The possible implications of this decision include:

- insurers reconsidering the ventures insured;
- exclusions in policy wordings being modified;
- cargo interests passing liabilities on to shipowners where they are no longer able to obtain cargo insurance;
- a restriction of the inherent vice defence for the carriage of conventional cargo carried by sea.

The full judgement can be found at the following website at: www.supremecourt.gov.uk/decided-cases/docs/UKSC_2010_0006_Judgment.pdf. Alternatively speak with your usual point of contact at the club for further information.

For offshore members, the club's offshore contract review service can provide assistance in understanding and interpreting the legal implications of their contractual arrangements. This ought to provide clarity as regards the extent of a member's liability and scope of P&I cover.

NEW TURKISH REGULATIONS REQUIRING SHIPS TO EVIDENCE VALID P&I COVER

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The Regulation on the Requirement to Obtain Insurance Coverage for Vessels against Maritime Claims and Supervision Thereof (the Regulation) is currently due to come into force on 1 July 2011. This article is a brief summary of the purpose of the regulation and the possible impact on shipowners.

EU Directive 2009/20 adopted a unanimous statement recognising the importance of insurance to protect victims of maritime casualties. The Regulation has been drafted in response to the EU Directive, by the Turkish Maritime Undersecretary, to ensure ships calling at Turkish ports maintain valid insurance for maritime claims, subject to limitation under the 1976 Limitation of Liability for Maritime Claims (LLMC) and the 1996 Protocol.

The Regulation can be summarised as follows:

- The Regulation applies to ships of 300gt or more, calling at Turkish ports and to all Turkish flagged vessels.
- Ships are expected to maintain indemnity cover provided by an International Group P&I Club or other insurer offering similar levels of financial security and cover.
- Ships should provide a copy of their certificate of insurance to the nearest harbour master through an agent domiciled in Turkey before entering into Turkish territorial waters. If a certificate of insurance terminates prior to departure from a Turkish port, it should be renewed by the shipowner and a copy of the new certificate should be submitted to the harbour master before departure.
- The port authorities will not issue permits for docking, mooring or anchoring, or certificates of seaworthiness, for ships that fail to comply with the above obligations.
- A valid original of the certificate of insurance should be present on board the ship and this can be examined by the harbour master at any time. In the event that the original of the certificate of insurance is not on board, the harbour master can order the ship to leave the port terminal. The ship will not be permitted to berth until an original of the certificate of insurance has been submitted.
- In the event that the Regulation is breached, a fine of between TL500 to TL20,000 (approximately US$300 to US$12,700) may apply.

There have been various discussions regarding the legitimacy of the Regulations, and whether the Turkish Maritime Undersecretary is entitled to force shipowners to maintain and evidence P&I insurance coverage. It is unclear at this stage whether the application of the Regulation will be delayed or the provisions of the Regulation will be adopted via another form of national legislation.

To conclude, the Regulation is due to apply from 1 July 2011 and will create various obligations on shipowners calling at a Turkish port. Failure to comply with these requirements may lead to the delay of the ship and/or a fine. We recommend that shipowners calling at Turkish ports familiarise themselves with the requirements of the Regulations and monitor their application.

WHAT POLLUTION LEGISLATION IS SPECIFIC TO LNG/LPG CARGO?

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There are a growing number of liquefied natural gas (LNG) and liquefied petroleum gas (LPG) ships on the high seas, due to the increasing demand for these products around the world, and more recently, their use by ships as a fuel source in preference to fuel oil. This article looks at the pollution legislation that applies to the carriage of LNG and LPG products.

LNG is carried as a liquid at –162°C and LPG, which includes propane and butane, is carried at –45°C and –0.5°C respectively. An accidental discharge would vaporise at ambient temperatures and therefore it would be unlikely to contaminate the marine environment. However, an accidental discharge could be hazardous due to the risk of asphyxiation, cryogenic burns, structural damage, fire and explosion. In addition, the air emissions from the venting or burning of boil-off gas (BOG) for the engines could be considered to be an air pollutant.

As with all pollution legislation, those specific to LNG/LPG cargo can be summarised under the conventions concerning prevention, intervention and compensation. We will consider both the international legislation applicable and then look at relevant US legislation.

PREVENTION

- The International Convention for the Prevention of Pollution from Ships (MARPOL 73/78), Annex VI, concerns the control of air pollution from ships. The revised Annex VI has reduced the admissible emissions of nitrogen oxides (NOx) from marine diesel engines, sulphur oxides (SOx) from ships and created designated Emission Control Areas (ECAs). Annex VI would apply to the venting or burning of LNG BOG for propulsion, either in a dual-fuel diesel engine or boiler, and also the burning of BOG in the ship's incinerator(s). Within the EU, shipowners have to ensure that SOx emissions comply with Council Directive 2005/33/EC. This Directive requires ships within EU ports to burn fuel containing less than 0.1% sulphur content (which is currently lower than the 1.0% requirement under MARPOL Annex VI.). SIGTTO (www.sigtto.org) has recently published articles on the impact of the Directive on steam-powered LNG ships. Venting of BOG would only occur in emergencies (which is admissible under Annex VI), as normally the BOG would either be used to fuel the engines, be reliquefied, burnt in the gas combustion unit or removed via the vapour return lines (when loading/discharging).

INTERVENTION

- The Protocol Relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil 1973 (the Intervention Protocol) applies if there is a casualty involving a ship carrying LNG/LPG. The Intervention Protocol gives coastal states the right to intervene to prevent, mitigate or eliminate the danger of 'substances other than oil', which includes LNG and LPG. Before taking such measures, the coastal state is to consult with other states affected, with independent IMO-approved experts and the measures must be proportionate. The cost of such measures can usually be recovered by the governmental authority against the shipowner under national law.
- The Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances 2000 (OPRC-HNS Protocol) applies to incidents involving hazardous and noxious substances, which include LNG/LPG. The OPRC-HNS Protocol is designed to facilitate international co-operation and mutual assistance between States when preparing and responding to HNS incidents. It requires operators of ships, ports and facilities handling HNS to have emergency plans for dealing with an HNS incident.

COMPENSATION

- Currently, there is no international compensation convention dealing with carriage of LNG/LPG. Reference should be made to the applicable national laws.
- The compensation regime applicable to incidents concerning the carriage of LNG/LPG will be the Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea 1996, or HNS

Convention. This convention is not yet in force; however, it will entitle compensation for personal injuries and loss or damage to property and the environment caused by incidents involving LNG/LPG. It is modelled on the CLC and Fund Convention. Thus the shipowner (and his P&I Club) will be strictly liable, up to an amount determined by the gross tonnage of the ship, to pay the first tier of compensation. The second tier comes from a fund levied on cargo receivers in all Contracting States on a post-event basis. The HNS Convention will only come into force when ratified by 12 Flag States that have minimum ship and cargo tonnage thresholds. So far, not enough states with the minimum thresholds have ratified the Convention; however, it is hoped that the adoption of the Protocol to the HNS Convention in April 2010 has now addressed the practical problems that had prevented many states from ratifying the original Convention.

- Until the 2010 HNS Protocol is adopted, compensation for loss/damage caused by LNG/LPG spills should be limited by the 1976 Limitation of Liability for Maritime Claims (LLMC) and its 1996 Protocol (if applicable). However, members will be aware that most LNG/LPG terminals insist upon limiting/excluding their liability under their terminal conditions of use contracts (COU). Prior to entering these terminal COUs, members should pass these to the club for review to ensure that the contract or indemnities fall within the scope of poolable cover.

US LAW

- LNG and LPG products are not considered to be hazardous substances under any United States environmental statutes. Therefore liability for accidental discharges of LNG and LPG is governed by state law or general principles of maritime law.
- The definition of a hazardous substance in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), excludes LNG/LPG products. CERCLA includes an express exclusion for LNG, as well as the so-called petroleum exclusion, which covers LPG. The Federal Water Pollution Control Act (FWPCA), as amended by the Oil Pollution Act of 1990 (OPA), regulates discharges of oil into the marine environment. While the FWPCA does not define 'oil', a long-standing 1995 interpretation by the US Coast Guard determined that neither LNG or LPG is an 'oil' under the FWPCA. Moreover, the Clean Air Act, as amended in 1990, regulates the accidental release of certain hazardous substances. Subsequent to the 1990 amendments, Congress amended the accidental release prevention programme to exclude most fuels. Furthermore, that programme only applies to stationary sources, and not to accidental release from ships.
- Although LNG and LPG discharges and releases are not regulated under CERCLA or the FWPCA because these products are not oil or hazardous substances, ships carrying LNG and LPG are subject to the Coast Guard regulations applicable to tank vessels carrying flammable liquids, and the construction and operation standards for vessels transporting liquefied gases. Violation of any of these regulations could result in liability under the common law doctrine of negligence. Under this doctrine, violation of a regulation intended to protect a claimant from harm, establishes a presumption of negligence.
- While LNG and LPG are not named as hazardous substances under US federal law, they may be listed as such under state environmental statutes. For example, the Washington State Water Pollution Control Law prohibits pollution of state waters and defines 'pollution' broadly to include contamination likely to create a nuisance or render the waters harmful, detrimental or injurious to the public health, safety, or welfare. The discharge of any substance, including LNG and LPG, would fall within the statute if the discharge causes any of the aforementioned problems. Members should review the environmental laws of those states where their ships operate.
- Finally, liability for damages caused by discharges of LNG and LPG may arise through negligence causes of action under general maritime law of the US and state common law.

CONCLUSION

The current pollution legislation specifically applicable to LNG/LPG cargo (which is in force) is restricted to the MARPOL Annex VI / Council Directive 2005/33/EC concerning air emissions from the burning of LNG in dual-fuel engines, and the Intervention Protocol/OPRC-HNS Protocol allowing coastal states to intervene in an LNG/LPG spill and for emergency plans to be carried onboard such ships.

Until the 2010 HNS Protocol is adopted, the 1976 LLMC and its 1996 Protocol (if applicable) remain the regime under which shipowners may seek to limit their liability for LNG/LPG-related incidents, subject always to any exclusions under domestic legislation or third-party contracts.

This is a brief summary of the legislation that may be applicable to the carriage of LNG and LPG. Should further information be required on any of the legislation referred to, please do not hesitate to speak with your usual point of contact at the club or Philip Stephenson.

STAFF NEWS

CLAIMS

Andrew Charlton has been appointed Director, Occupational Diseases
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STANDARD CLUB EVENTS

NOVEMBER/DECEMBER

10 November, member and broker seminar – Oslo
In conjunction with Vega, the Standard Club's representative in Scandinavia, the club held its first event for members and brokers on 10 November at the Oslo Shippingklubben. The evening event was well supported by key supporters, with 20 attendees from the region.

18 and 19 November, member seminar – New York
This year's forum, held at the India House in downtown Manhattan, attracted record participation, with the 30 attendees representing a range of members. The forum provided the members with the opportunity to meet the New York office staff with whom they regularly deal and the London-based underwriters and managers. The seminar topics included presentations on personal injury, piracy, US and Canadian legal developments, and media relations in addition to an interactive workshop on pollution incident management in the USA.

29 November, Standard Asia Offshore Forum – Singapore
The fifth Standard Asia Offshore Forum was held on Monday 29 November at the Shangri La Hotel in Singapore and was the best attended yet, with 80 guests. The seminar looked forward to the future of the offshore oil and energy business in Asia, and heard that rising demand for oil and greater exploration and production activity in Asia is likely to lead to increased pressure on oil service assets and on insurance capacity. The participants also heard presentations on how to manage media and public perception in a crisis, and on how marine contractors can minimise their exposure to uninsurable risk by careful attention to drafting of contract terms.

30 November to 1 December, member and broker seminar – Singapore
In conjunction with the Offshore Forum, the club hosted two days of training at the Amara Hotel for the members based in the Asia Pacific region. Presentations on the theme of the new market environment included predictions on the future of shipping markets, legal updates from the UK, USA, China and the field of maritime arbitration, and a review of developments in shipbuilding contracts. Day two focused on current industry issues, commencing with presentations on ship operation challenges and the club's safety and loss initiatives from the Standard's director of loss prevention and Singapore-based surveyor, followed by a piracy update from various industry experts, and concluding with a pollution forum.

The Standard Bulletin is published by the managers' London agents:

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