

Club News

Annual general meeting and board meeting

The club held its Annual General Meeting and board meeting in Seoul on Friday 12 October.

At the AGM, those directors retiring by rotation and appointed since the last meeting were duly re-elected.

The meeting approved changes to the club's articles, as set out in the notice of meeting, the accounts were approved and the auditors were reappointed.

At the board meeting, the board reviewed the club's affairs generally and the key issues were as follows:

New director

The board was pleased to welcome Barnabas Hurst-Bannister as a new director. Barnabas had also been recently appointed to the Standard Europe board. Barnabas has had a long and distinguished career in the London insurance market and brings an independent and expert insurance perspective to the board's deliberations.

Tonnage growth

The board noted that the club's tonnage has continued to grow steadily during the year, principally from existing members, and now stands at 129mgt.

Strategy

The board reviewed the club's strategy and business plan for the ensuing year and reaffirmed the club's core objectives – to provide excellent service, good financial security and good value P&I insurance – while approving the development of additional covers and products for the benefit of the club's members.

Financial condition

The free reserves are currently forecast, based on the year's performance to date, to grow modestly to \$361m at the club year-end. The contributors to this increase are a satisfactory investment return and a reduction in past years' claims forecasts, offsetting an expected underwriting loss in the current year. While the year has not experienced so many large claims as in the last couple of years at the same point of development, the policy year underwriting result is still forecast to be in deficit.

Setting the Standard for Service and Security

October 2012



Alistair Groom, Chief Executive

+44 20 3320 8899
alistair.groom@ctplc.com

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Investments

The board reviewed the investment results and strategy and made some minor adjustments to the strategy going forward. The club's investment returns have been better than all of the other International Group clubs over 1, 3 and 10-year periods, also outperforming the fund's own benchmark. They have been a significant contributor to the club's financial strength. However, it will be difficult to achieve continued good returns in the current environment.

Solvency II

The board noted that the club remains on track to be compliant with the requirements of Solvency II, although it now seems possible that implementation of the new solvency regime by the EU regulators may be further delayed.

Renewal

The board took into consideration the need, on the one hand, for the club to achieve an underwriting result close to break-even, and, on the other hand, the difficult financial situation facing many shipowners in the current freight market. The board was acutely conscious of the need to keep any increase in premium rates as low as possible, while recognising that the current underwriting result needs to be improved, especially at a time when the club's investments cannot be expected

to yield big returns. The board also took into consideration the fact that, generally, insurance premium rates have been eroded through fleet renewal. Accordingly, the board determined that a general increase of 7.5% was necessary to allow the club to move towards a balanced underwriting position. Deductibles will be increased by 5%, with deductibles up to \$10,000 being increased by \$1,000. The Standard London class committee will decide that class' renewal requirements at its meeting in November.

Certification of insurance cover and blue cards

The board is strongly supportive of helping owners by providing the evidence of insurance required under conventions and other legal regimes. The board considered two examples of this, blue cards for both the non-war and war risks aspects of the *EU Passenger Liability Regulation* (which mirrors the *Athens Convention protocol*), which enters into force on 31 December 2012, and the insurance requirements of the *Maritime Labour Convention*, which enters into force on 20 August 2013. In both cases the board believes that the club should assist as far as possible by providing the required cover and evidence of insurance, in order to reduce to the maximum extent possible any additional costs for owners. The board more generally believes that similar insurance certification requirements should be provided by the club where possible.

The Standard Club board, Seoul, Korea, 12 October 2012



Front row (left to right)

Gunther Jaegers, Reederei Jaegers GmbH
Paolo Clerici, Coederici SpA
Cesare d'Amico, D'Amico Societa di Navigazione SpA
SS Teo, Pacific International Lines (Pte) Ltd
Rod Jones, Deputy Chairman, CSL Group Inc
Ricardo Menendez, President and Chairman, Ultrapetrol SA
Constantinos Peraticos, Deputy Chairman, Pleiades Shipping Agents SA
Rob Clarke, BC Ferry Services
Matt Cox, Matson Navigation Co. Inc.
John Reinhart, Maersk Line Limited

Middle row (left to right)

Andreas Martinos, Minerva Marine Inc
Necdet Aksoy, Turkish Cargo Lines
Luigi D'Amato, Fratelli D'Amato SpA
J N Das, The Shipping Corporation of India
Erik Johnsen, International Shipholding Corporation
David Marock, Charles Taylor
Bhumindr Harinsuit, Harinsuit Transportation Co. Ltd
David Koo, Valles Steamship Co Ltd

Back row (left to right)

Alistair Groom, Charles Taylor
Daniel Ofer, Zodiac Maritime Agencies Ltd
JB Rae-Smith, Swire Pacific Offshore Ltd
The Hon. Sir John W Swan KBE, JP, Vice-President, Bermuda
Art Bensler, Teekay Shipping

The Standard Club board meeting dinner, Seoul



On 12 October 2012 the Standard Club board meeting was held in Seoul, the location being chosen in recognition of Korea's increasing importance for the club. The Standard Club has seen steady growth in the membership from this region over the past five years, with Korea now representing over 13% of the club.

A dinner preceded the meeting. The directors joined over 120 of the club's Korean members and friends. Guests were treated to a welcome speech from Mr SS Teo, the chairman of Standard Asia, and closing toasts were performed by the Standard Club chairman, Mr Ricardo Menendez, and Mr Shin of Shinsung Shipping. The directors enjoyed the opportunity to meet the members in an informal environment whilst being entertained by a troupe of traditional Korean dancers.



Mr SS Teo, chairman of Standard Asia

Piracy – an update on recent developments



Sam Kendall-Marsden, Syndicate Claims Director

+44 20 3320 8876
sam.kendall-marsden@ctplc.com

General trends in pirate attacks

According to a recent report by the International Maritime Bureau, no pirate attacks occurred off Somalia during July 2012. This was the first attack-free month since early 2008. Overall, 2012 has witnessed a 74% reduction in Somali pirate activity compared to the preceding year.

Pirate attacks were also sharply down during the first six months of this year, with 69 attacks reported compared with 163 during the same period in 2011. Thirteen of the 69 attacks were successful, compared to 21 successful attacks during the same period in 2011.

In terms of ransoms, it is thought that approximately \$24.3m has been paid to pirate groups so far in 2012. However, by this time last year, more than \$100m had been paid. This represents a 75% reduction.

The recent decline in successful attacks (and the corresponding decline in ransoms paid) is thought to be the result of shipowners protecting themselves by following Best Management Practices (BMPs), the increased use of private maritime security contractors (PMSCs) and the presence of naval forces in the region.



Nevertheless, despite recent trends, Somali piracy remains a significant concern with attacks covering a vast area which encompasses the southern Red Sea, Gulf of Aden, Gulf of Oman, Arabian Sea and Somali Basin. In short, all shipping routes in the north-west Indian Ocean are threatened. Additionally, at the end of June 2012, Somali pirates were still holding 11 ships and 218 crew, 44 of whom were being held ashore in unknown locations and conditions.

Piracy consequently remains a significant concern for members whose ships transit the high risk areas, and recent successes in the fight against piracy should not be allowed to lead to complacency.

The club's requirements

The club's rules relevantly provide that *"no claim is recoverable if... the board determines that the carriage, trade, voyage or operation was imprudent, unsafe, unduly hazardous or improper"*.

In the context of piracy, this provision has implications in relation to whether or not BMPs and International Maritime Organization (IMO) guidelines are followed, and for the use of PMSCs.

Whilst a failure to fully comply with all of the requirements of BMPs will not automatically vitiate cover, a causative failure to comply with BMPs could prejudice a member's right of recovery, particularly in cases where cover is provided on a discretionary basis. Cover could also potentially be affected by a failure to comply with BMPs in the case of those flag states that have made compliance with BMPs mandatory. Members are consequently strongly urged to comply with BMPs to reduce the risk of their ships being successfully hijacked whilst transiting high-risk piracy areas.

The club adopts a neutral stance towards the use of PMSCs, although it recognises that their deployment has been effective in preventing successful hijackings. Indeed, it is generally believed that no BMP-compliant ship with armed guards on board has been successfully hijacked. However, the decision whether or not to engage PMSCs must be made by members on a case-by-case basis, following a full voyage-specific risk assessment and always in compliance with flag, port, coastal state and any other applicable laws. It is also vitally important that all weapons licensing requirements are complied with. Cover could be prejudiced if legal requirements are not met.

GUARDCON (the BIMCO standard-form contract for the use of PMSCs) provides for a security team of at least four members to ensure adequate protection. However, a failure to use this or any other recommended minimum number of guards will not automatically affect cover but could do so depending upon specific circumstances and causation. The number of guards deployed should reflect the member's voyage-specific risk assessment as to the level of protection required.

Members should exercise due diligence in the selection of PMSCs, including following the IMO's *"Revised Interim Guidance to Shipowners, Ship Operators, and Shipmasters on the use of privately contracted armed security personnel on board ships in the high risk area"* <http://www.imo.org/ourwork/security/secdocs/documents/piracy/msc.1-circ.1405-rev2.pdf> – (last updated in May 2012), which also provides practical guidance in relation to the use and deployment of PMSCs. Their use should not be considered as an alternative to following the latest version of BMPs but as a complementary measure in appropriate cases following a voyage-specific risk assessment. The master should also be involved in the decision-making process in relation to whether to deploy PMSCs.



The importance of GUARDCON when contracting PMSCs

BIMCO – in conjunction with clubs, owners, underwriters and lawyers – developed GUARDCON to assist the shipping industry by providing a clearly worded and comprehensive standard contract on which shipowners can engage PMSCs.

This was in response to the problem that an ever-growing number of PMSCs had entered the market, each with different terms and conditions of employment. Often, contracts were poorly drafted and offended club cover. Clubs and owners were required to spend a considerable amount of time and resources reviewing and amending contracts, often at short notice. In contrast, GUARDCON is approved by all of the International Group clubs and its provisions are fully compatible with club cover.

GUARDCON sets out demanding criteria in relation to the insurance cover PMSCs are required to carry. This, coupled with the permits and licence provisions in GUARDCON, is a deliberate move designed to exclude PMSCs who may potentially place shipowners and their crews at risk.

Clear liability provisions lie at the heart of GUARDCON and provide for a poolable 'knock-for-knock' allocation of risk, with each party being responsible for loss of/damage to their own property and the death of/injury to their own personnel and for indemnifying the other in relation to the liabilities for which it is responsible.

GUARDCON provides that each party indemnifies the other in relation to claims by third parties arising out of the indemnifying party's negligence, save to the extent of the other party's negligence. In the event of third-party claims or crew liabilities arising out of the accidental or negligent discharge of a firearm, GUARDCON provides that the PMSC will indemnify the member.

Conclusion

Members are urged to continue to take all necessary steps to protect themselves against pirate attacks, including following BMPs, performing detailed voyage-specific risk assessments and engaging PMSCs where appropriate, following the IMO guidelines, supporting GUARDCON and considering whether the club's kidnap and ransom cover is required to supplement existing P&I cover. The club will continue to support and inform members in this challenging area.

Salving ships in Iranian waters: what are the risks?



Toby Stephens, Partner,
Holman Fenwick Willan LLP
+44 20 7264 8366
toby.stephens@hfw.com



Daniel Martin, Associate,
Holman Fenwick Willan LLP
+44 20 7264 8189
daniel.martin@hfw.com



The complex network of international sanctions against Iran has led many companies to stop all trade to or from Iranian ports. But there are still companies that have identified legitimate trades, which they wish to continue, and there will also be ships transiting Iranian waters, even if they are not calling at Iranian ports.

So what happens if your ship has an incident at an Iranian port or in Iranian waters and you need salvage assistance, or what if you are the salvor called to assist such a ship? What impact do the international sanctions against Iran have on casualty response of this kind?

The issues are complex, and detailed legal advice will be required, but the issues that salvors will need to consider (and that the owners of the casualty need to be able to address as quickly as possible) include the following:

- Was the original intended voyage permitted under the relevant sanctions regimes? As ever, this will involve considering the cargo, the counterparties and any other relevant issues
- Is the salvage likely to result in any benefit to a prohibited person? For example, is the casualty, her bunkers, stores, cargo or freight at risk owned by an Iranian entity or itself designated?
- Can the salvaged cargo be discharged ashore and/or onto lightening ships without breaching sanctions? This will be particularly relevant where the original voyage did not involve discharging cargo in Iran
- Which, if any, Iranian entities will need to be paid so that salvage services can be rendered? This could include port agents, surveyors, clean-up crews, etc., but it will also include any suppliers of equipment
- Can an appropriate salvage team together with salvage equipment be mobilised, without exposing the salvage company and its employees to the risk of breaching trade sanctions?
- Who will pay for the salvage services, and will either the owner's insurance cover or the salvor's insurance cover respond? The club and other insurers will face the usual difficulties paying claims or providing security to Iranian persons; and
- If any licences are required, can these be obtained from the necessary regulators in time?

In any salvage situation, there is an inevitable time pressure and urgent action is required, particularly if there is a risk of environmental damage. However, the consequences of breaching international trade sanctions are very serious, and can include unlimited fines and lengthy prison sentences, so it is vital that all of the issues highlighted above are carefully considered before any action is taken.



New People's Republic of China Civil Procedure Law and its influence on maritime cases



Lucinda Liu, Claims Manager (Hong Kong)

+852 6074 7903
lucinda.liu@ctplc.com



The Second Amendment of the *Civil Procedure Law of the People's Republic of China* (PRC), originally adopted on 9 April 1991, was approved by the Standing Committee of the National People's Congress on 31 August 2012 (the '2012 Amendment'). It will have effect from 1 January 2013.

Being the second major procedural law – besides the *Special Maritime Procedure Law* – to stipulate the procedure for maritime cases in China, the 2012 Amendment may concern those shipowners and charterers that trade to the country. Below is a brief introduction to the main changes that will affect future procedures.

I) Public interest litigation

Previously, when ship-related pollution accidents occurred, government authorities such as the Ocean and Fishery Bureau, the Environmental Protection Bureau and the Maritime Safety Administration, represented the state and claimed for loss of resources. However, their title to sue had always been challenged. The 2012 Amendment means that, for the first time, both government authorities and 'relevant organisations' are entitled to lodge lawsuits demanding compensation for any conduct affecting public interests. Unfortunately, no definition is given as to which 'relevant organisations' can lodge lawsuits, but it is clear that the number of bodies entitled to bring lawsuits has widened.

II) Tighter time limits for submitting evidence

Clause 65 of the 2012 Amendment states that if evidence is submitted after a deadline set by the court, without appropriate explanation, the court can exercise its discretion to either not recognise it or accept it. The court also has the potential to impose a fine on the party concerned.

Evidence collected outside the territory of China must be notarised. This may take some time and can be beyond the control of litigants. In such cases, consideration should be given to apply for a time extension so that any deadline is not missed.

III) Electronic data is recognised as evidence

Clause 63 recognises 'electronic data' as evidence but does not specifically define the term. We would assume electronic data to include emails, electronic contracts and invoices, instant messages, compact discs, web pages and domain names, etc.

Today, the shipping industry often uses emails and instant messages as forms of communication. The difficulty facing the court is how to identify the validity of electronic data as evidence, as such can potentially be amended.

IV) Appraisal and experts' opinions

Appraisal conclusions are regarded as recognised evidence according to current *Civil Procedure Law*. However, the 2012 Amendment changes the term 'appraisal conclusion' to 'appraisal opinion', which appears to give the court more discretion on evidence identification. Furthermore, the new law stipulates that if appraisers and experts refuse to be cross-examined, the court will not include their opinions as evidence.

Given the specialist or technical nature of many maritime cases, an appraisal or an expert opinion can often play a crucial role in clarifying facts or liability. Besides considering their qualifications, shipowners and charterers should ensure that appraisers and experts are willing to act as witnesses before appointing them.





V) Pre-arbitration property preservation

Although the *Special Maritime Procedure Law* allowed property preservation before commencement of an arbitration, the judicial interpretation delivered by the Supreme Court limits the 'property' to ships, cargo on board and/or bunkers and supplies. Preservation of other property and assets, such as bank accounts or real estate is

subject to current *Civil Procedure Law*, which does not allow pre-arbitration property preservation. The 2012 Amendment grants property preservation prior to arbitration, but it is unclear whether this is also applicable to overseas arbitration. Clarification by judicial practice or interpretation is awaited.

VII) Service of court documents

The 2012 Amendment allows court documents to be served via fax or email, and the requested period for postal service and service by public notice is shortened from six months to three. Therefore, international parties need to adhere to deadlines to avoid improper service, which could lead to a default judgment.

VII) Time limit for applying for a retrial

The time limit for applying for a retrial is reduced from two years to six months starting from the date when a final and unappealable judgment becomes enforceable.

Lucinda Liu joined the managers of Standard Asia in August 2012. She has a degree in Maritime Law from Dalian Maritime University and an LLM on International Commercial Law from Nottingham University. She has worked at P&I clubs and for shipowners. Lucinda has experience in handling both P&I and FDD cases, and has a passion for container transportation.

New covers update



Robert Drummond, Director of Business Development

+44 20 3320 8942
robert.drummond@ctplc.com

In July, the club announced the introduction of three new complementary covers available to members of the club: Kidnap and Ransom (K&R) cover, Traders' Transport Liability cover and Professional Liability cover for ship agents and managers. These covers were developed in response to feedback from members who wanted the club to broaden the range of covers available that would benefit the members through the club's claims service.

We have been encouraged by the level of interest and take-up in just the first few months, and we expect this to continue over the coming months.

Kidnap and Ransom cover

Whilst the number of attacks in the Gulf of Aden has declined in recent months, piracy remains a real and significant risk there and in other high-risk areas. As a consequence, the club has had a very large number of enquiries and orders to bind cover for individual voyages. The feedback from our members is that whilst the cover is competitively priced, the real benefit is the comfort of knowing that the club will be involved in the unfortunate event that one of their ships is seized.

In addition, the club has had a number of enquiries from members for fleet worldwide policies. Some of the enquiries are for fleets that are not solely entered in the club and we are working to achieve beneficial solutions for our members.

Professional Liability cover

A number of members have been in contact with an interest in ship managers' professional liability cover. The members feel that it is a natural extension to include this cover where they have their P&I entry. Again, enquiries have come from members who do not have their entire entry with the club.

Traders' Transport Liability cover

The club has received a number of enquiries from large commodity traders and was very pleased to welcome an existing ship owning member as the first to take up this cover. Further orders are hoped for when existing policies expire. The feedback from the enquiries has been that there is a significant benefit in the comprehensive and transparent nature of the cover.

For further information on any of these covers, please contact the club through your usual channels or contact Robert Drummond directly.

Club news

New joiners

Claims

Lucinda Liu has joined Standard Asia as *Claims Manager (Hong Kong)*
+852 6074 7903
lucinda.liu@ctplc.com

Niccole Lian has joined Standard Asia as a *Claims Executive*
+65 6506 2857
niccole.lian@ctplc.com

Yasmine Tyebally has joined Standard Asia as a *Claims Executive*
+65 6506 2858
yasmine.tyebally@ctplc.com

Kin Cheung Kung has joined Standard Asia as a *Claims Executive*
+65 6506 2880
kincheung.kung@ctplc.com

Annie O'Sullivan has joined the Europe Syndicate as a *Claims Executive*
+44 20 3320 2308
annie.osullivan@ctplc.com

Sacha Christopher has joined the Europe Syndicate as a *Claims Executive*
+44 20 3320 8878
sacha.christopher@ctplc.com

Nikolaos Dimokidis has joined the Mediterranean Syndicate as a *Claims Executive*
+44 20 3320 2286
nick.dimokidis@ctplc.com

Mahtab Khan has joined the Mediterranean Syndicate as a *Claims Executive*
+44 20 3320 2258
mahtab.khan@ctplc.com

Konstantinos Samaritis has joined the Mediterranean Syndicate as a *Claims Executive*
+30 210 429 1861
konstantinos.samaritis@ctplc.com

Richard Stevens has joined the Mediterranean Syndicate as a *Claims Executive*
+44 20 3320 8825
richard.stevens@ctplc.com

Underwriting

Risheng Lin has joined Standard Asia as an *Underwriting Assistant*
+65 6506 1433
risheng.lin@ctplc.com

Oliver Wassell has joined the Europe Syndicate as an *Underwriting Assistant*
+44 20 3320 8982
oli.wassell@ctplc.com

Emily Newman has joined the Europe Syndicate as an *Underwriting Assistant*
+44 20 3320 8997
emily.newman@ctplc.com

Reinsurance

Luke Harkins has joined the Reinsurance Department as *Reinsurance Administrator*
+44 20 3320 8843
luke.harkins@ctplc.com

Loss Prevention

Ian Price has joined Loss Prevention as *Director of Loss Prevention*
+44 20 3320 8836
ian.price@ctplc.com

Christophe Vaes has joined Standard Asia as a *Marine Surveyor*
+65 6506 1435
christophe.vaes@ctplc.com

P&I Executive

Darina Ivanova has joined the Finance department as *Accounts Assistant*
+44 20 3320 2265
darina.ivanova@ctplc.com

Frances Collier-Wright has joined the Marketing department as *Marketing Assistant*
+44 20 3320 2348
frances.collier-wright@ctplc.com

Christopher Du Toit has joined the Risk and Compliance department as *Risk and Compliance Administrator*
+44 20 3320 2241
christopher.dutoit@ctplc.com

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Telephone: +44 20 3320 8888 Emergency mobile: +44 7932 113573
Email: pandi.london@ctplc.com Website: www.standard-club.com

Please send any comments to the editor: **Kristian Gray**
Email: kristian.gray@ctplc.com Telephone: +44 20 3320 8993



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**Charles
Taylor**