

Club News

Issue of Blue Cards under EU Regulation on the Liability of Carriers of Passengers by Sea in the Event of Accidents 2009 (EU PLR)

Some members and brokers have asked us to provide more information on how we will assist members in meeting the requirements of Regulation (EC) No 392/2009 of the European Parliament and Council of 23 April 2009 on the Liability of Carriers of Passengers by Sea in the Event of Accidents – known as the EU Passenger Liability Regulation (EU PLR) – which comes into force on 31 December 2012.

The detailed requirements and impact of the EU PLR were set out in the *club's circular of 24 September 2012*. In our report of the recent club board meeting in the *Standard Bulletin, October edition* we explained that the board was strongly supportive of the club providing evidence of insurance required under conventions and other legal regimes, and we have been working to secure a cost-effective and efficient system to help members meet all of their obligations under the Regulation.

We can confirm that we will be able to provide both of the blue cards required under the PLR.

Background

The EU PLR will require relevant passenger ships to carry a state certificate attesting that insurance is in place for that ship in accordance with the Regulation. This will be issued by the flag state (where the flag state is within the EU or the EEA States – Norway, Iceland and Liechtenstein) or by the port state where the ship is trading internationally into or out of the EU or EEA, but is flagged outside the EU or EEA. The state issuing authority will issue the state certificate when it is satisfied that the carrier has in place the necessary insurance to meet the requirements of the Regulation. The Regulation, mirroring the reservation and guidelines to the Athens Convention, makes provision for there to be two blue cards evidencing the necessary insurance requirements – one for normal P&I or 'non-war' risks, and one for the war risks. (It should be noted that there is no liability for claims caused by war itself under the Regulation, but there may be liability for claims caused by terrorism, which is classified as a war risk for insurance purposes, and it is for this risk that the war risks blue card is needed.)

Non-war blue cards

All clubs in the International Group have agreed that they will issue blue cards for the non-war risks. Like with other blue cards for other conventions, these will be addressed to the state authority but sent to the member. Unless we are advised otherwise, we will issue the documentation in the name of the owner. There has been some debate as to whether the documentation might be expected to be in the name of the passenger ticket provider. The entity required to maintain financial security is the 'carrier' who actually performs the whole or a part of the carriage. In order to ensure consistency with the blue cards already issued in respect of the Bunkers Convention and the 1992 CLC, the PLR Blue Cards will generally be issued in the name of the registered owner and not the bareboat charterer or other entity. Some members may want us to name other entities such as the passenger ticket provider. We will do so but there is a risk that local port authorities may delay a ship if there are different entities named on the relevant bunker and non-war blue cards.

There are particular issues relevant to larger passenger ships, as the potential liability under the Regulation may approach or potentially exceed the limit on cover provided under Rule 6.7 (US\$2bn). At this time, the club does not have any ships entered whose exposure under the regulations exceeds the limit on cover for passenger claims on current exchange rates, but for ships carrying more than 3,000 passengers the club may be exposed to guaranteeing claims under the blue card which over a period of time could exceed the limit on cover. We will need to ensure that the club is adequately protected and will liaise directly with the members concerned.

Our *website* will be updated daily to identify that a non-war blue card has been issued for relevant ships, naming the carrier as above.

Setting the Standard for Service and Security

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War blue cards

There is a difference of approach by the clubs in the International Group to the provision of war blue cards. As explained in the *club circular of 24 September 2012*, the risk for which the war blue card is required is a risk that is only partially covered by the clubs, and some clubs have decided that they will not issue war blue cards.

The Standard Club has been working on obtaining additional reinsurance that will enable us to issue war blue cards for ships entered with the club at the request of the member. The necessary reinsurance contract has been completed satisfactorily and we believe that the club's provision of a war blue card will be an attractive choice for members. There is an application form to complete and the

member will be required to pay for the reinsurance that will enable the club to issue the war blue card. We are aware that members may prefer to obtain their war blue cards from a third-party provider other than the club, but if they choose to obtain the war blue card from the club, which is known by States' authorities as an experienced and acceptable insurer/guarantor, our website will be updated daily to identify that a war blue card has been issued for relevant ships, naming the carrier as above.

Members who would like the club's assistance should approach their usual club underwriter for more details.

Managing a major casualty



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Introduction

The Standard Club has been involved in some of the largest maritime casualties in recent years. As an insurance and risk manager, would you know what to do if one of your ships was involved in a major incident? In this article, we draw on our experience to set out key issues that members should consider in order to respond effectively.

Initial notification

The initial notification you receive may come from a number of sources – a panicked master, a colleague, your underwriters or perhaps professional salvors. In any event, you can expect to receive an enormous amount of information – some of it contradictory and some of it unreliable – in a very short space of time, and you will need to assimilate it quickly to build up as accurate a picture as you can of what is happening at the casualty site. Your aim should be to gain a clear understanding of the situation as quickly as possible so that you can react appropriately.

The anatomy of a major casualty

You will need to understand the anatomy of a major casualty to properly plan your response and determine the resources you will need. This involves having a clear understanding of the condition of the ship and how it might deteriorate, whether there is loss of life and/or pollution, the likely involvement of the authorities, what professional and media relations assistance you will need, the claims you are likely to face and the pitfalls you need to avoid in order to protect the shipowner's position.

You will also need to understand the interrelationship between insurance interests. This can be an acute issue in the context of a major casualty where an operation to salvage a stricken ship can become a wreck removal if salvage and repair ceases to be economically viable.

Major casualty response plan

You should have a good working knowledge of your company's casualty response plan. The plan should:

- define what is meant by a major casualty
- provide key information in relation to your fleet
- confirm the information you need to gather
- confirm who you need to notify and what you need to tell them
- identify your incident management team and clarify their responsibilities
- provide guidance in relation to preserving evidence
- set out key contacts (including authorities, salvors, pollution responders, underwriters, and technical and legal advisors)
- provide basic information in relation to salvage and wreck removal, and towage contracts.

It is best practice to have conducted drills at regular intervals using realistic scenarios involving your underwriters and advisors.

Building a team

Once you understand the anatomy of the casualty, you will be able to assemble the team you will need to resolve the situation. These are the people you will rely on most heavily in the days, weeks and months ahead.

In most major casualties, the team will include your underwriters, local correspondents and surveyors, salvors, technical experts and legal advisors specialising in casualty work. You may also need to draw on other experts, including in relation to pollution, fire, cargo handling and, increasingly, tax.

Whilst the make-up of your team will vary depending on the nature of the casualty, in every case you should be dealing with experienced professionals with the right skills, who are known to you and who you are comfortable working with.

The club's role

The club can provide invaluable assistance in the event of a major casualty. We have gained a considerable body of experience through helping members to resolve some of the most challenging major casualties in recent years. We have long-standing working relationships with salvors (some of whom are our members), technical advisors, pollution experts, correspondents, surveyors, cargo experts and legal advisors from all over the world.

In the event of a major casualty, an experienced claims handler from the club may be deployed to the scene of the incident. Their role would be to provide advice and practical assistance to the member on site. This may include liaising with the authorities, advising and assisting in relation to casualty management (including contractual arrangements with salvors), assisting in building the team and formulating the overall strategy to resolve the situation.

Liaison with the authorities

You will need to positively engage with the bodies that have authority over the casualty at the earliest opportunity. This means you will need to work with your local advisors to determine who those authorities are, the powers they have and the information they will require from you. You will need to be ready to respond to orders from the authorities – for example, to remove the wreck and to address pollution issues – which could have very tight deadlines.

Practically, it may not be possible to comply with the deadlines set (a not uncommon one being the requirement to remove a wreck within a matter of days), but you will need to be able to respond in a positive way, setting out a credible strategy.



Emergency Response

Planning

Formulating a clear strategy for resolving the casualty situation and communicating it to the authorities effectively will demonstrate that you are in control, provide a degree of comfort and make it less likely that you will lose control of the situation. The danger is that if you do lose control then there is a risk the resolution of the casualty situation could be delayed, the authorities may step in, costs could escalate rapidly and your company could suffer reputational damage.

Consider breaking the operation down into key phases. These might comprise an emergency response phase (often involving bunker removal or other preventative measures to mitigate potential environmental impact), a caretaking phase once the casualty has been stabilised to allow time for a long-term strategy to be put in place and, finally, a resolution phase, whether it be the removal of a wreck or the towage of a stranded ship.

The club can assist in the planning process, drawing on the experiences we have had in previous cases to try to arrive at the most effective solution. This will often include assisting in any tendering process – a tried and tested method for arriving at the most effective and cost-efficient strategy for wreck removal. The club would work with technical consultants in the preparation of the invitation to tender and actively participate in the tender review process, to include interviewing the various bidders, advising in relation to the selection of the successful contractor and assisting in negotiating the final contract.

Pollution

Pollution can take many forms – oil, chemicals, cargo – and is often a key concern to authorities and local populations. Getting the pollution response right is an important factor in building trust.

You should have a good working knowledge of the various experts you can turn to in the event of a pollution incident. In cases of significant oil or chemical pollution, you are likely to turn to the International Tanker Owners Pollution Federation (ITOPF), which provides objective technical advice and information on all aspects of pollution response and the effects of spills on the marine environment.

ITOPF has a considerable body of knowledge and experience in resolving pollution incidents around the world. It has credibility with authorities and can send technical experts to a casualty site to report and provide advice in relation to remedial action. You should also have a good relationship with the spill response contractors embedded in your company's casualty response plan.



Pollution

Public relations issues

If you suffer a major casualty, you need to be prepared for it to fall under the glare of the media spotlight, particularly if there is loss of life, pollution or if it occurs in an environmentally sensitive area. With the rise of social media, everybody can be a reporter or a commentator, and news networks clamour for material with the advent of continuous rolling news.

You should be prepared to deal with a large number of enquiries and you will need a clear strategy for how you will respond. You are likely to require professional advice in relation to how to respond, how issues reported in the media can impact on your casualty response strategy and how to manage newer phenomena such as social media.

In fact, your public relations strategy should begin long before any major casualty occurs, through cultivating constructive relationships with the media and presenting the image of your company that you would like them to portray in the event the worst happens.

Legal issues

You will need access to legal advice in relation to local issues, as well as in relation to wider issues such as salvage, wreck removal, towage contracts and the environment. Cultivate a relationship with the legal advisors you would turn to in the event of a major casualty. They should have the resources to cope with a major incident, including a sufficient number of suitably qualified and experienced personnel.

You should also have a good working knowledge of the main forms of salvage, wreck removal and towage contracts – Lloyd's Open Form (LOF), Wreckhire, Wreckfixed, Wreckstage, Towcon and Towhire. You should understand the key contractual provisions and the factors to be considered in deciding which contract to select. Whilst this is an issue upon which you would ordinarily seek legal advice, if the initial notification of the casualty includes an invitation to sign a LOF contract under extremely pressured circumstances, are you confident you would know what to do and what the possible consequences might be?

Claims handling

Understanding the anatomy of a major casualty includes understanding the various third-party claims you may face and protecting your company's position. There may be claims for personal injury or death, pollution, damage to another ship, harbour facilities or cargo. Your emergency response plan should help you to formulate a strategy for gathering and preserving evidence, including restricting access to the ship and crew. This should be done in conjunction with your legal advisors, who can assist in protecting confidential evidence and preparing for the inevitable local and flag state enquiries.

On a practical level, you may be required to respond to a large number of claims and you will need to have an appropriate system in place to handle them. The club and your legal advisors will be able to assist, but there will be a need for central control and record-keeping.

Conclusion

Suffering a major casualty is something that no shipowner would wish to experience, but if the worst does happen, you should feel confident that you will be able to understand the situation you face and formulate a strategy to deal with it effectively and to the satisfaction of the authorities. Preparation is vital and by making sure you understand the issues that are likely to arise, planning how you will resolve them, knowing who you will call upon in case of need and rehearsing your casualty response plan, you will give yourself the greatest prospects of bringing the casualty situation under control and managing it to a successful conclusion.

Top 10 tips

1. Record and distribute information quickly and accurately
2. Understand the situation you face, the interests involved and what needs to be done to resolve it
3. Have a good working knowledge of your company's casualty response plan and conduct regular drills with your club and your advisors
4. Have good working relationships with ITOPF and specialist pollution responders, and be aware of the sensitivity of environmental issues and how they can impact on the overall operation
5. Make sure you have access to specialist legal advice in relation to major casualty issues and have a good working relationship with your legal advisors
6. Build an effective team of trusted advisors known to have the right skills and experience
7. Engage positively with the authorities at the earliest possible stage and throughout the life of the casualty
8. Communicate an effective strategy for resolving the casualty to maintain the authorities' confidence and retain control
9. Anticipate the claims you are likely to face and formulate a strategy for gathering and preserving the evidence you are likely to need
10. Make sure you have appropriate systems available to you for recording and managing a large number of diverse claims – organisation is critical

Investigating crime at sea – whose jurisdiction?



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The shipping industry has come under a lot of criticism over recent years for failing to deal with serious crimes on board its vessels. For many owners, such criticism is unwarranted; nothing could be further from the truth. Many owners have developed systems to react swiftly on the essential preservation of crime scenes and evidence, collection of forensic evidence (including the use of rape kits) and taking suspects into custody. The main problem centres not on the handling of the situation on board the vessel, but in finding or persuading the appropriate authority to take charge of the situation and investigate. The real issue appears to be that suspects of serious crimes avoid prosecution despite the efficient and professional actions of the master, his officers and the vessel's owners/charterers.

Where an offence occurs in international waters, the authorities in the next port face legal and practical limitations regarding jurisdiction to board a vessel and investigate offences committed in international waters, and further difficulties in relation to the ability to prosecute alleged perpetrators of crimes at sea. Article 27 of the United Nations Conference on the Law of the Sea provides that the criminal jurisdiction of a coastal state should not be exercised to arrest any person or conduct any investigation in connection with any crime committed on a foreign ship passing through its territorial sea, except in relation to cases outlined in the Article and which relate to that jurisdiction. For example, possession of drugs or pornography on board is often easier to deal with in the next port rather than offences against the person or theft.

A report will be made to the flag state by the owner, which may well not have the resources or capabilities to board the vessel at a foreign port and conduct an investigation. The police in the flag state territory itself will also have limited resources. The issue is further complicated by the fact that the victim may be from a country unconnected to the flag state or the next port of call, and the alleged perpetrator from yet another jurisdiction.



Justice

Other factors, such as geography and time zones, can also play a significant role in all of this alongside the commercial drive for vessels to arrive and depart within given time scales. The industry has its emergency contingency planning for dealing with the situation on board, but masters are not lawyers and it is difficult for them to judge who exactly should be informed of an incident and/or whether the vessel should deviate to a port that will assume jurisdiction.

Aviation context

Aviation does not suffer with this problem: wherever a plane lands is where the crime will be dealt with. Whilst maritime legislation is understandably diverse, a similar process can be considered for incidents at sea, making a receiving port competent to deal with crime as if it had been committed within its jurisdiction. There are, however, a number of issues with this. There are certain crimes that can be prosecuted by the police wherever committed in the world and regardless of the flag. These include crimes committed by citizens of particular countries in the UK; for example, the police have powers to prosecute offences under such laws as the s72 Sexual Offences Act/ s72 and the Criminal Justice and Immigration Act, but they do not have jurisdiction to carry out an investigation on board a foreign flag vessel outside the jurisdiction.



Crime

UK

In the UK, the Association of Chief Police Officers (ACPO) Maritime Planning and Operations have been lobbying to try and create common standards, certainly for ships visiting the UK.

Its work includes:

- encouraging the industry to adopt the ACPO Crime Manual (parts of which have already been adopted by the IMO);
- lobbying for a change in legislation;
- lobbying for a requirement that currently does not exist in the law of England and Wales to allow an investigation wherever the victim is British; and
- ensuring there are English-speaking police available to discuss the case 'live time' and to know what their response would be to certain crimes (for example experience has shown that some countries may not respond quickly to rapes).

ACPO is now lobbying the European Commission for an EU initiative for dealing with crimes in international waters.

US

In the United States, the Cruise Vessel Security and Safety Act 2010 was passed in order to deal with the jurisdictional dilemma. Crimes against and disappearances of US citizens are now reported to the FBI and the US Coast Guard for vessels operating to and from US ports. The legislation also calls for video surveillance technology. In the UK and Europe, much depends on the willingness or capacity of a sovereign state to investigate a crime that has been reported to the local authorities. Clarity is needed to ensure that investigations are initiated quickly, that evidence is preserved in a timely and professional manner, and is then passed on to the relevant investigating authority, enabling prosecutions to be brought.

IMO

The IMO is to develop guidelines to assist in the collation and preservation of evidence, following the allegation of a serious crime taking place on a ship or following a report of a missing person from a ship, and in the pastoral and medical care of alleged victims of serious crimes. An initial proposal for guidelines, prepared by the UK and Philippines' Governments and the Cruise Lines International Association (CLIA), has now been published.

Conclusion

It is important that the shipping industry has, as part of its general contingency planning, procedures agreed with flag states and police that are to be adopted if a crime is reported to them, and furthermore that similar procedures are in place to ensure that vital information and instructions are given to the local police in the relevant port of call.

No longer just a ship



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FPSO

Robert Dorey, Offshore Director writes: Readers of the *Standard Bulletin, Offshore Special Edition* will be aware that the club has a significant offshore entry and that FPSOs constitute around 60% of the Standard Club's offshore tonnage. We are often asked questions about FPSOs by our conventional cargo carrying shipowner membership, and I am pleased that our Charles Taylor Energy colleagues were able to contribute below their perspective on the development and challenges from a broader perspective.

Introduction

Exploration and production (E&P) projects in the oil and gas energy sector have for many years utilised the newest offshore technologies in their developments. The pioneers of early offshore development projects had a vision whereby oil and gas could be extracted from deeper and more hostile seas around the world. It became evident that as known field resources were depleted, development into more complex marginal fields would be necessary, coupled with the need to maintain field economics.

During the period through the 1960s and 1970s operators invested significant funds in the construction of fixed offshore production platforms. These included pile-driven steel and concrete gravity structures secured to the seabed and used as hubs for drilling wells and extracting hydrocarbons, then processing and exporting them as commercial oil and gas resources. These fixed structures were placed in water depths of up to 1,400 feet and were originally designed for service life cycles up to 25 years. As technology improved, many platforms were granted life extensions, with operators using these technological advancements to drill directionally and produce from numerous satellite reservoirs remote from the fixed structures. However, this solution had limitations and a defined life span.

Floating Production Systems (FPS)

The offshore industry started to turn its attention to alternative production facilities that would enable it to extract and process oil and gas with greater flexibility, whilst maintaining field economics in an increasingly competitive market. This led to the birth of the first floating production systems (FPS), which provided the flexibility to produce oil and gas from wells in deeper water depths without incurring the costs of expensive fixed structures. The world's first floating production unit (FPU), a converted semi-submersible drilling rig, was installed in the Argyll Field in the North Sea during 1975. Hailed a success by operators and contractors, significant investment was injected by the industry into the technology that would be needed to expand the productivity of such a marine-based system. Further FPS developments followed in which conventional marine vessels, including bulk crude supertankers and semi-submersible vessels such as drill rigs, were retrofitted with topside process equipment, subsea production, and marine and export pipelines, with the prospect of converting these into economically viable FPS units. With an increasing focus on developing technology, one of the main breakthroughs was the implementation of flexible risers, and the first FPS to use these was the Balmoral Field in 1986.

Floating Production Storage and Offloading Unit (FPSO)

As FPS technologies evolved, the units became more complex and the birth of the floating production storage and offloading unit (FPSO) arrived. This new generation vessel allowed operators to not only produce from the subsea completions but to store and load oil on to shuttle tankers. They allowed more economic distribution of products by sea whilst combining that with the ability to export produced gas via pipelines.

The first of these new generation FPSO systems was the *Gryphon A* FPSO. A built-for-purpose vessel with a drag chain turret and state-of-the-art flexible riser systems, this unit was installed in the North Sea during 1993 with 14 wells. Over the years, this has been extended to accommodate five fields with 35 subsea wells.

Turret system technology continued to evolve and the next major innovation was the retrofitted dynamic marine swivel design, which allowed conventional mono-hull tankers to be converted into FPSOs, thus reducing the build time. In the late 1990s, contractors purchased numerous bulk tankers that were no longer required for crude oil transportation and began converting them in the huge shipyards in South East Asia to meet the market demands for FPSOs.

During the latter part of the 1990s, technology had moved along and the first concrete FPU's were commissioned. These were a barge-like design with flat bottoms that were able to operate as FPSOs in shallow waters in areas such as West Africa where vessel hydrodynamics are not an issue. Their simplified beam porch riser technology can be utilised which allows high-capacity systems with multiple production and distribution lines to be operated. An example is the *FPSO Akpo*, which operates in shallow water.

Floating Liquid Natural Gas Units (FLNG)

In recent years, the offshore oil and gas industry has moved in to the construction of floating liquid natural gas units (FLNG), utilising state-of-the-art bespoke production technology on a scale that just 20 years ago could only be conceptualised.

Conclusion

So where does this take the oil and gas industry going forward? Today, technologies continue to develop to address diverse solutions for complex and marginal fields, including produced fluids such as LPG and LNG, and remote geographic locations from the Arctic Circle to the tropical waters. New technologies allow operations in deeper water depths and more hostile environments, such as the Gulf of Mexico, and allow operators to develop economic solutions for high-pressure and high-temperature oil and gas reservoirs.

At the time of writing this article, there are some 286 floating production units currently operating worldwide, 65% of which are FPSO or FLNG vessels. Of these, 64% are conversions and 36% are newbuilds, with 58% contractor and 42% operator owned and operated. The largest unit is some 116,000 tons with a storage capacity of 2 million barrels of crude oil, and a production capacity of 160,000 barrels of oil and 5 million cubic metres of gas a day.

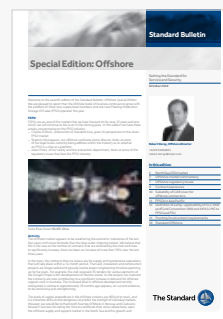
Over the next decade, it is estimated that some \$40bn will be invested in the current technologies and the next generation of FPS units. As the demand for energy continues to grow and operators look to operate in more remote and harsher environments, one can only see the continuation of the development of the floating production unit market.

Recent publications



Standard Bulletin, Club News October 2012

- The Standard Club board meeting, Seoul, Korea, 12 October 2012
- Piracy – an update on recent developments
- Salving ships in Iranian waters: what are the risks?



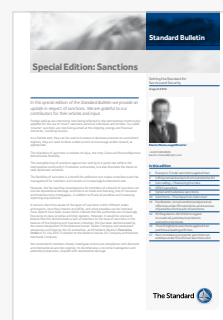
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- North Sea OSV market
- Offshore market commentary
- Offshore regulatory issues
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Standard Cargo, Bagged Cargo Claims October 2012

This edition of Standard Cargo makes some suggestions to reduce the risk of cargo damage for members whose ships are trading with bagged cargo.



Standard Bulletin, Special Edition: Sanctions August 2012

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- Lifting Iranian bunkers from outside the EU
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