

Club News

Setting the Standard for
Service and Security

April 2013

Renewal

The club announced in October a general increase of 7.5% to balance the need to move towards underwriting break even with the need to keep P&I premiums at a minimum at a time when many members continue to experience very difficult trading conditions. Overall, this target was achieved, with additional costs associated with the International Group general excess loss programme charged in addition.

The club has welcomed some new members at renewal. Additionally, a number of members have transferred ships from other clubs or have committed to attach new ships as they deliver during the year. In a year where the club has been conscious to contain costs and keep premium increases low, the club has seen some welcome consolidation.

Tonnage at 20 February 2013 is 135m, an increase of 9% over the year. Premium income for the Group over all classes is projected at \$323m and free reserves at year end are projected to be slightly increased over last year. The club's European inland waterway class, London class, announced a general increase as expiring and achieved this, also adding some additional business both from existing and new members.

The club's investment portfolio has again had a positive year in volatile markets achieving a 6.6% return. This result follows three successive years in which, according to annual reports, the club has seen the best investment returns in the International Group. Investment strategy remains conservative with a high allocation to cash and a cautious allocation to equities.

The claims environment remains unpredictable with the 2012 policy year likely to have been one of the worst on record for the Group's pool claims (shared claims between \$8m and \$60m for 2012). The reinsurance market was difficult at this renewal, with the club absorbing some additional costs in its general purchasing arrangements. But on a positive note, the club's non-Pool programme has been renewed with a \$1bn limit again this year and all members were able to receive their documentation as renewals were agreed with them.



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The Standard



The Maritime Labour Convention 2006 enforcement and compliance



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In the *Standard Bulletin*, February edition, we reported on the Maritime Labour Convention (MLC) and its impact on P&I cover. Amongst other things, this raised the issue of financial security for repatriation of seafarers as is required under the MLC and, more particularly, whether club certificates will be an acceptable form of security. Subsequent developments on this issue can be found in our *Circular* here. In this article, we summarise the key elements of enforcement and compliance before the MLC comes into force on 20 August 2013.

The MLC is a convention which will apply to shipowners through the national laws of ratifying states. It will be the responsibility of the flag state to establish a system for inspection and certification to ensure ships flying its flag comply with the MLC. This responsibility may be delegated to subordinate organisations such as classification societies.



All ships over 500 GT (other than those that navigate exclusively in inland waters or sheltered waters or areas where port regulations apply) must be certified as being MLC compliant.

Certification will consist of a 'Maritime Labour Certificate' and a 'Declaration of Maritime Labour Compliance', both of which must be carried on board and posted in a conspicuous place accessible to the crew. A ship's Maritime Labour Certificate will be issued on approval of a ship's compliance with the MLC by its flag state. The Declaration of Maritime Labour Compliance is divided into two sections. The first sets out the applicable regulations and will identify areas of shipowners' operations that will be inspected. The second section is to be completed by the shipowner and requires verification of the measures in place for ongoing compliance and continuous improvement. Shipowners' safety management systems will be fundamental in demonstrating on-going compliance with the MLC.

In broad terms, areas of inspection consist of employment, welfare and safety issues designed to preserve and promote crew welfare. A full list of inspection issues is set out in Title 5 of the *MLC* here.

MLC certification will be subject to renewal every five years, with reviews every two to three years. Checking ships' certificates are in place will form part of port state control's inspections and ships will face detention by port authorities for non-compliance.

Members are recommended to take all necessary steps to ensure compliance in advance of the MLC's implementation in August 2013.



¹ Maritime Labour Convention Appendix A5-III

Best practice guidelines in the offshore wind energy industry



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The last decade has seen a dramatic increase in the development of the global offshore wind energy sector. Northern Europe has been leading the charge towards a global offshore wind capacity of 130GW by 2020, in line with ambitious European targets to source 15% of all energy from renewable sources within the same deadline.

Wind energy can be described as the harnessing of moving air by wind turbines to produce electricity, and it is predicted that the North Sea will be transformed into the global centre of the offshore wind industry. To sustain the enormous growth phase the offshore wind energy industry is experiencing, the supply chain and regulators have had to adapt quickly. A number of leading operators have developed new ship types that are dedicated to offshore wind farm installation and maintenance operations. These ships are characterised by large deck cranes that are capable of lifting considerable weight at extended reaches and large stable deck space; these criteria have made conversions based on jack-up platforms an obvious choice.

Health and safety procedures specific to what is a largely self-regulated industry have been slow to catch up and there have been several preventable accidents during construction, installation and maintenance. The typical injury claims the club is seeing tend to arise from hazards resulting from working at height, slips and trips, dropped objects and crush injuries.



Initially, the industry implemented its existing shore-based Safety, Health, Environmental and Quality standards and legislation to the offshore wind environment. However, it soon became apparent that the same standards do not always readily integrate with marine activities and maritime legislation. The industry has responded with the production of best practice guidelines tailored to the offshore wind industry, such as those produced by the International Marine Contractors Association and RenewableUK.

The offshore wind and energy industry must also respond to the need for appropriately qualified and experienced personnel. According to the EU's Wind Energy Technology Platform report (TPWind), the European on and offshore wind industry faces a deficit of 5,500 appropriately qualified personnel, which might increase to 18,000 by 2030. The industry has acknowledged that there will need to be a drive towards recruiting and training suitably skilled personnel to carry out the work required to meet the global wind farm targets. TPWind has highlighted the issue and set out recommendations to meet the industry's personnel demands.

While the offshore wind industry is aware of the need for further development of specific safety guidelines and legislation, this will take some time. The industry is not in a position to wait for the legislation to catch up and, in the meantime, this will mean drawing on the best practices from other industries, such as oil and gas and port and marine, as well as developing bespoke health and safety solutions to the unique challenges of offshore wind development.

Piracy update



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Changing trends

According to the latest figures from the ICC International Maritime Bureau, worldwide piracy is at a five-year low, with 297 attacks in 2012 compared to 439 in 2011. Over half of the attacks in 2012 were off east and west Africa, and these areas consequently warrant special mention.

Somali piracy off east Africa has declined significantly as a result of the naval presence in the region, shipowners following Best Management Practices and the increased use of armed guards, which have proved to be effective. However, piracy off west Africa is becoming an increasing problem, with attacks rising in the Gulf of Guinea. The attackers are often violent and the use of guns has been reported in over half of the attacks in that region in 2012.

The ship types most commonly attacked are container ships, bulk carriers and tankers, and fishing boats and other small craft have also been targeted.

International standard ISO/PAS 28007: 2012

The International Organization for Standardization's (ISO) new standard for private maritime security contractors (PMSCs) is now available to purchase from the *ISO's website*. If, following a detailed risk assessment, a decision is made to engage PMSCs, the club recommends that shipowners exercise due diligence in their selection, including following the *International Maritime Organization's guidance* and obtaining positive confirmation of the steps being taken by the PMSC to secure compliance with ISO/PAS 28007: 2012 when the formal compliance process begins in spring 2013.

BIMCO GUARDCON

The club also recommends that members contract with PMSCs using BIMCO GUARDCON, which is well on the way to becoming the industry-standard contract for providers of maritime security. BIMCO GUARDCON has become an integral part of many shipowners' due diligence as it deliberately sets a high standard for PMSCs, designed to weed out those providers who are most likely to present risks to owners' ships, crew and cargoes.

Insurance for PMSCs

BIMCO GUARDCON sets out demanding criteria in relation to the insurance cover PMSCs are required to carry. The club has been working with market underwriters to ensure wordings are GUARDCON-compliant and satisfactory policies are now available.

Floating armouries

Floating armouries are frequently used by PMSCs, but the legality of their use is currently the subject of fierce debate. Until this issue is clarified, members should be aware that if a loss arises out of the use of weapons illegally sourced from a floating armoury then that could prejudice P&I cover. However, the club's board could exercise their discretion in a member's favour if they were satisfied they had exercised an appropriate degree of due diligence to try to avoid the risk.

The use of illegally sourced weapons (whether hired-in, or PMSC-owned) may also prejudice a PMSC's insurance cover and could expose a member to an increased risk.

Recent case law developments



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The dangers of issuing clean bills of lading: Retla Rust Clauses

Owners often come under commercial pressure from shippers to issue a clean bill of lading. The shipper may have problems being paid under a letter of credit if the bill of lading is claused and so will offer a letter of indemnity (LOI) in return for a clean bill. The recent decision in *The Saga Explorer*¹ shows, however, that owners should exercise caution when issuing clean bills of lading against a LOI, particularly when the condition of the cargo is questionable.

Facts

The Saga Explorer involved a 'Retla clause' in bills of lading for a consignment of steel pipes. A Retla clause can sometimes be found on the face of a bill of lading for shipments of iron, timber, steel and metal products. Its purpose is to enable a master to issue a clean bill of lading, whilst providing no representation that the cargo was free of rust or moisture when it was received by the carrier. Its use was upheld by the US Court of Appeals in *Tokio Marine & Fire Insurance Company Ltd v Retla Steamship Company*², hence the name.

In *The Saga Explorer*, the load port survey described the pipes as "partly rust stained" and that the "damages/exceptions" had been acknowledged by the master. It recommended that the mate's receipt and the bills of lading be claused accordingly. The booking note stated that the carrier's bills of lading were to be issued as per the mate's receipt.



The mate's receipt contained a Retla clause but stated "Condition of Cargo as per Survey Report", although this was not attached. The bills of lading had no such reservation, stating the cargo was shipped "in apparent good order and condition". This was because the shipper had requested clean bills against an LOI. The bills incorporated US COGSA 1936 and had the following Retla clause:

"RETLA CLAUSE: If the Goods as described by the Merchant are iron, steel, metal or timber products, the phrase 'apparent good order and condition' set out in the preceding paragraph does not mean the Goods were received in the case of iron, steel or metal products, free of visible rust or moisture or in the case of timber products free from warpage, breakage, chipping, moisture, split or broken ends, stains, decay or discoloration. Nor does the Carrier warrant the accuracy of any piece count provided by the Merchant or the adequacy of any banding or securing. If the Merchant so requests, a substitute Bill of Lading will be issued omitting this definition and setting forth any notations which may appear on the mate's or tally clerk's receipt."

The consignee claimed damages from owners when it was found the pipes were heavily rusted on discharge.

Decision

The Court found against owners, holding that:

1. Under English law, the Retla clause is to be interpreted restrictively and does not exclude surface rust of "whatever degree" from the representation of good order and condition, although it does qualify the appearance of superficial rust and moisture on any steel cargo. It would likely form the basis of a determination as to whether there has been a further deterioration due to the inherent quality of the goods on shipment under US COGSA³ and the Hague-Visby Rules⁴. The Court accordingly disagreed with the decision in *Tokio Marine*.
2. The condition of the cargo was not reasonably and honestly represented by the clean bills. The decision by the owners to issue and sign clean bills involved false representations which were known to be untrue and intended to be relied upon. It was not an honest, non-expert view of the cargo and would therefore prejudice those relying upon the contents of the bills of lading. The Court also criticised the fact that the owners appeared to have been influenced by the provision of the LOI from the shipper.

Comment

The Saga Explorer shows why members should take care when signing clean bills of lading. The master must form an honest, non-expert view of the cargo as he sees it, particularly as regards its apparent order and condition. At present, under English law, the carrier will not be able to use a Retla clause to limit its responsibility for the description of the goods.

Members should also be aware that although it is common practice to obtain a LOI from shippers in return for issuing clean bills, not only will this potentially prejudice club cover, such LOIs are likely to be unenforceable under English law if the owner knew at the time that the cargo was not in good order and condition.

¹ [2012] EWHC 3124 (Comm)

² [1970] 2 Lloyd's Rep 91

³ Article 4(2)(m)

⁴ Section 4(2)(m)

The Human Element DVD



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The Human Element DVD was launched at an exclusive premiere screening in London on 20 March. The film, which has been approved by the Maritime & Coastguard Agency, offered a unique insight into the role of human behaviour in safety at sea.

The DVD was developed from the award-winning *Human Element book*, which was published in 2010 by a consortium comprising the Maritime & Coastguard Agency, The Standard Club, BP Shipping and Teekay Marine Services. The film took the concepts of the book and developed them, building on the key insights and principles, making them easy for the seafarer and management alike to put to practical use. The DVD is presented in a modular format and includes detailed facilitators' notes, designed to promote thought and discussion amongst viewers between each of the modules.

When I first went to sea many years ago the master was god on his own ship and the culture was not to question his actions or decisions or, indeed, those of any other senior officer. A recipe for disaster! Thankfully, this is not a culture that is very prevalent anymore due to the understanding of the 'human element' and advances in bridge team management. With the knowledge and awareness of how we as individuals react with our surroundings and those colleagues around us, many of the accidents that occur can be easily avoided.

There have been many good publications written on the subject of the 'human element' but in my opinion now we have an excellent visual training aid for the benefit of all, whether on board or ashore in the management organisation.

This DVD is the culmination of efforts of the members of the consortium, applying their technical safety expertise specifically in the 'human element'. The aim was to produce a training film showing how the 'human element' affects our decision making processes with a realistic scenario to which all seafarers and managers can relate. I believe this has successfully been achieved.

Training is not an instant fix to problems within the industry. However, by studying the concepts conveyed in this DVD, this will hopefully lead to a greater understanding of how the 'human element' affects what we do that should be an everyday part of how we work, then the aims will have been achieved.

Members of the Standard Club will be sent a sample of the Human Element DVD in April.



New inland waterways limitation regime



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Strasbourg Convention on the Limitation of Liability in Inland Navigation 2012 (CLNI) – Seminar held in Bratislava, February 2013, The ‘Strasbourg Convention’

After some years of discussions between the various member states, the final act for the adoption of the Strasbourg Convention 2012 on the Limitation of Liability in Inland Navigation was signed on 27 November 2012, which will ultimately replace the current 1998 Strasbourg Convention. The Diplomatic Conference for the adoption of the convention, organised by the Central Commission for the Navigation of the Rhine (CCNR) was attended by representatives of 13 states and several accredited associations of the CCNR including IVR (International Association of the Rhine Ship's Register).

The new convention introduces an enlarged scope of application (the previous convention was restricted in its application only to the River Rhine and Mosel) and is now open to the Danube countries. The new convention introduces increased limits, particularly in respect of injury and death of passengers, and damages arising from the carriage of dangerous goods.



Seminar

A seminar was arranged by IVR for 7 and 8 February 2013 in Bratislava to introduce the new convention to the inland waterways shipping community in the Danube region and to expand its scope and promote the benefits of a limitation of liability regime and its application.

The seminar was dedicated to developments in the field of the law of the carriage of goods and passengers on inland waterways, focussing in particular on the changes to the CLNI Convention and the legal implications for shipowners and charterers.

The speakers from Germany, The Netherlands, France, Hungary, Ukraine and the United Kingdom delivered presentations on:

- the new CLNI Convention;
- its application and legal implications;
- the effect on insurance, and
- the practicalities of setting up a Limitation Fund under the revised convention.

Advice to members

The application of a limitation of liability regime is essential for shipowners; such a regime allows insurers to calculate the maximum exposure for any one claim or event. In the absence of such an agreed regime unregulated environments will create uncertainty and potentially higher insurance costs.



Club news

New joiner Claims

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Recent publications



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- The Maritime Labour Convention 2006
- Suspension of performance
- Club Events – 2012 club events
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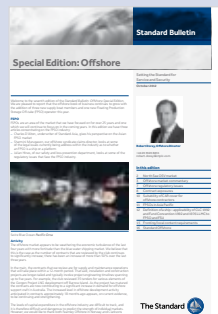
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- Investigating crime at sea – whose jurisdiction?
- No longer just a ship



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