

# Standard Bulletin

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Setting the standard for  
service and security

The Standard



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According to the World Health Organization (WHO), Ebola virus disease (formerly known as Ebola haemorrhagic fever) is a severe, often fatal illness, with a case fatality rate of up to 90%.

- The club continues to monitor the ongoing situation in West Africa.
- Alerts will be issued via our website and twitter to communicate major updates.
- Members who trade in the affected region should be aware of guidance issued by WHO and closely monitor crew health.

## West African Ebola virus outbreak – an update

The Standard Club has been monitoring the outbreak of Ebola in West Africa and, following a report by the World Health Organization (WHO) that the number of cases continues to increase, urges members to remain vigilant.

The Ebola outbreak, one of the worst in history, is currently affecting four countries in West Africa: Guinea, Liberia, Nigeria and Sierra Leone. The **World Health Organization** has reported that the outbreak continues to accelerate with the total number of cases standing at 3,069 (including 1,552 deaths) as of 28 August.

Ebola is one of the world's most virulent diseases, with the infection transmitted by direct contact with the blood, bodily fluids and/or tissues of infected animals or people. Although the WHO has not recommended any trade or travel restrictions to Guinea, Liberia, Nigeria and Sierra Leone (as of 28 August), it is vital that members monitor the health and wellbeing of their crews and take all necessary precautions to prevent infection.

In this regard, it is considered prudent to:

- advise crews to remain onboard vessels whilst in ports in these jurisdictions to reduce the risk of coming into contact with individuals carrying the virus;
- instruct crew to report any of the known initial symptoms of Ebola immediately;
- in the event of any member of crew

falling unwell whilst in a high-risk area, seek immediate advice from experienced medical services or a company doctor. Members should also inform the club as soon as possible;

- consider introducing enhanced hygiene and sanitation procedures aboard vessels throughout any stay in a high-risk area;
- strictly adhere to ISPS procedures whilst in ports in these jurisdictions, so as to minimise any risk of stowaways or other unauthorised third parties gaining access to the ship.

Members should also be aware of any increased health inspections, procedures and/or disruptions at the various ports in the region. Measures introduced by the jurisdictions noted above are changing and evolving on a continual and sometimes daily basis, and the club would recommend that members seek updates from local agents and/or club correspondents in respect of imminent calls at potentially affected ports.

For further information, members are also directed to the very regular updates in respect of Ebola published by the WHO and specific web alerts posted on the **club's website**.

# A change in the assessment of damages?



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The method on which the market value of goods is based may be changing. In a recent international trade case, the English High Court preferred to use a spread of dates rather than the spot rate when determining the market value of goods for the purposes of calculating damages for late delivery. This method may be applied in late delivery of goods by a shipowner.

## Introduction

The basic principle of damages is to put the innocent party in the same position it would have been in had there been no breach of contract. The *prima facie* measure of damages for late delivery of cargo is the difference between the value of the cargo on the last day by which it should have been delivered under contract and when it was actually delivered.

However, determining the market value of a given cargo at different points in time can be very difficult and is often contentious. It has been previously accepted that, under English law, the measure of damages is based on the market value at the date and time of the breach. However, an alternative approach has been taken by the English High Court in a recent international trade dispute between the buyer and seller of fuel oil cargo: *Galaxy Energy International Ltd v Murco Petroleum Ltd* [2013] EWCH 3720 (Comm), 2012 Folio 1077.

## Case study

Galaxy, the buyer of 35,000 mt of fuel oil on FOB terms, nominated the *Seacrown* to load the cargo on 6 January 2012. The cargo was to be delivered to the *Seacrown* by the

seller, Murco, for loading between 15 and 17 January 2012. Due to delays by Murco, the ship did not berth until 20 January, sailing on the 21 January. Galaxy sought to recover the difference in market value of the cargo between the time the cargo should have been delivered to the ship and when it was actually delivered.

The court was required to determine the market price of the cargo at the date of Murco's breach of contract – i.e. late delivery. Two proposals were put forward:

- 1) To use the spot price of the cargo as published by Platts on 20 January 2012 (the day on which the cargo was actually delivered).
- 2) To use the prices of the cargo as published by Platts over a spread of dates from 12–25 January to determine the fairest value.

It was agreed that Platts, a market information provider, publishes its data based on the market, rather than setting the price for the market. The appointed experts also agreed that it was usual for traders to set prices based on the prices published by Platts over a spread of dates.

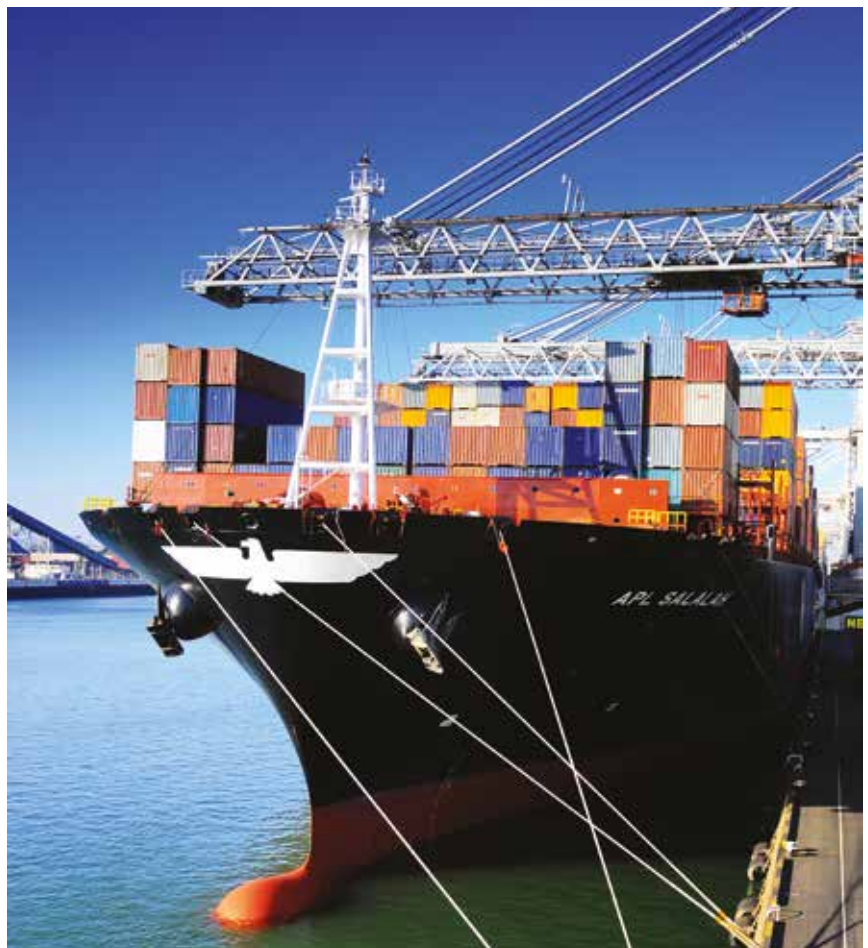
It is rare for a shipowner to successfully argue that the difference in market value is too remote or consequential. This is because shipowners know that commodity markets fluctuate and cargoes are sold during transit.

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**Conclusion**

The presiding judge, Judge Mackie QC, held that a spread of prices is closer to the fair market value than a spot price. It was commented that the fact that a spot price is easier to use when measuring damages is not a reason to prefer this method.

The judgment confirms that, where there is an available market for the goods, the market value can be determined by using the prices published on a spread of dates to show a more accurate picture of the real loss suffered rather than the spot rate for the date (and even time) of actual delivery.



# Safe carriage of yachts on deck



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Yachts can easily be carried on deck with little risk of harm, when properly and safely secured. This article outlines some key checks to ensure safe passage.

Pleasure yachts are frequently carried as deck cargo. This may be to deliver a new yacht from the builder to the owner or because the owners wish to reposition their yacht in a new cruising ground without undertaking a long ocean passage.

Unfortunately, there have been many cases of yachts being seriously damaged during a passage, as a result of being badly secured on deck.

Badly designed cradles, inadequate support for the hull and keel, and incorrect use of chain lashings and webbing straps can all contribute to damage. This can include chafing, damage to the yacht's hull and fittings, or even serious structural damage, particularly if the vessel carrying it experiences heavy weather.



- **Cradles** should be designed to support the full length of the yacht. Short cradles designed for use in a boat yard are unlikely to be adequate. Cradles should comply with the **IMO International Convention for Safe Containers (CSC)** if the yacht is to be treated as containerised cargo.
- **Keels** should be fully supported. Wooden blocks should usually be avoided as these can move during heavy weather. Screw type jacks with a soft wooden pad between the boat and the jack are preferable.
- **Frames** should be fully supported longitudinally and thwart ships to maximise the amount of friction to prevent slippage.
- **Lashings** to support cradles and frames should be robust, with chain lashings preferable. These should be fixed at a sufficient angle to prevent movement of the frame.
- **Boat mooring line cleats** are designed to secure the boat when it is moored in a marina where there is little or no swell and very little force is exerted on them. These will not normally be strong enough to withstand the forces imparted on them should the vessel encounter heavy weather and rough sea states. Lashings that completely cross the yacht from side to side will avoid the need to use cleats.
- **Soft webbing straps** are often used to offer protection to the hull and reduce the risk of chafing. Unfortunately, they can stretch and come loose and can flutter in high wind, causing chafing. Felt or foam pads can be positioned between the strap and the surface of the craft's hull as protection.
- **Chains** provide better rigid tension than webbing straps and should be used in combination. Short webbing straps should be used to connect to attachment points on the yacht. These can then be tensioned and secured with chains down to the deck/cradle.
- **Plastic protectant** Shrink-wrapping the yacht will help to protect the yacht from chafe as well as from dust, soot from the vessel's funnel and bird droppings.

Pleasure yachts can be safely carried as deck cargo if properly secured. The IMO code of practice for stowage and securing of cargo, and the vessel's cargo securing manual should be followed at all times to avoid risk of damage.

# Brazil's new port law



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The new Brazilian port law (Law 12.815/13 – Nova Lei de Portos) was enacted to try and tackle one of Brazil's most noticeable infrastructural challenges: ports and terminals. The infrastructure of ports and terminals in Brazil needs to be updated to suit modern sizes of vessels and trade demands. Brazilian ports and terminals are in need of substantial investment and a major upgrade.

The Nova Lei de Portos came into force on 5 June 2013. It aims, amongst other things:

- to increase private and governmental investment;
- to upgrade the current port and terminal facilities;
- to reduce bureaucracy, costs and taxes;
- to increase competitiveness of Brazilian trade; and
- to provide a significant update to the ports' and terminals' regulatory/legal framework.

Whilst, economically, Brazil is consistently growing, it faces serious infrastructural challenges. Lack of adequate infrastructure is a common problem faced in Latin America, which can be a deterrent to carrying out business in the region.

## The problem

Many Brazilian ports such as Santos are suffering congestion problems as well as a lack of infrastructure. Ports are in need of modernisation and deepening, which presently is preventing modern container ships from docking at certain terminals. This results in cargo ships leaving either partly full or having to wait until high tide to sail to avoid any potential grounding.

Many terminals also struggle to efficiently manage the volume of vessels calling at Brazilian ports. This, together with the dredging problems, undoubtedly contributes to port congestion.

## Effects of the port law

Both public and private terminal regulations have encountered significant changes as a result of the Nova Lei de Portos.

Public terminals in Brazil belong to the federal government and are leased to private operators under long-term contracts (as per the constitutional principle: 'Ports are public, service is private'). The Nova Lei de Portos aims to reduce handling charges and increase the efficiency of port operations. Private operators are chosen by public bid and the new law modifies the selection criteria, granting the handling of the port to the most efficient port operator.

The bids are now organised by the **National Agency for Waterway Transportation (ANTAQ)** instead of the individual port authorities. ANTAQ aims to standardise procedures and implement such procedures, but as Brazil is such an extensive country, performing this task could be cumbersome.

For instance, the enactment of the Nova Lei de Portos has interrupted the automatic renewal of the terminal leases and many of the existing leases have expired. These now have to be renewed through ANTAQ bids.

The Nova Lei de Portos also settles one of the main legal disputes regarding the handling of third-party cargoes by private terminals. This has now been authorised and hence competition has increased, instigating development and generating investment.

## Conclusion

In practice, it still remains to be seen whether this law will have any substantial impact on the efficiency of Brazilian ports and terminals, and how long will be needed for that impact to be noticeable. So far the ambitious objectives of the Nova Lei de Portos are not being accomplished at the speed initially envisaged.

# Proposed changes to the NYPE form



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The proposed draft amendment to the NYPE 93 form of charterparty is expected to incorporate a number of additional clauses with which parties will be familiar.

The New York Produce Exchange (NYPE) form is one of the most common forms used for the carriage of dry cargoes by a time charter party, the other being the BALTIME. With 47 years between publication of the first version in 1946 and the second version in 1993, the next version is perhaps not strictly due, but reflects the impact of some key intervening decisions. We refer to these below:

- The *ASTRA [2013] 2 Lloyd's Rep 69*  
We can anticipate that Clause 11(b) 'Hire Payment – Grace Period' will be amended to reflect the decision in the *ASTRA*. In this case, it was decided that failure to effect even one payment of hire promptly is capable of being repudiatory. The Drafting Committee is yet to decide precisely how this is to be formulated to interact with the anti-technicality notice provisions to ensure that a party that innocently pays for hire more than three days late on one occasion is not put in a worse position than a party that persistently pays for hire, say, two days after the due date.
- The *ZENOVIA [2009] 2 Lloyd's Rep 139*  
In this case, it was held that the charterer was not bound by its approximate Notice of Redelivery. The proposed new provisions for redelivery in Clause 4 are likely to require the charterer to take reasonable steps not to hinder redelivery by the date set out in any notice given. We trust that the final version will make clear whether this applies to both approximate ('advance') and definite notices.
- The *KITSA [2005] 1 Lloyd's Rep 432*  
The issues that arise in relation to hull fouling and consequential speed and performance issues when a vessel stays for prolonged periods in tropical waters, including the right of the owner to rely on the implied indemnity, seem to have been in mind when the new BIMCO Hull Fouling Clause for Time Charterparties was drafted. This is likely to appear in the new form and expressly provides that if the ship is 'stuck' in a tropical zone, the responsibility for the maintenance of the hull in an efficient state transfers to the charterer. It will be up to the parties to negotiate how long the ship can remain in one place in a tropical zone, with the default position being 15 days.
- Some changes, including those relating to the obligation for performance of voyages (changed from 'due' to 'the utmost' despatch), and speed and performance, appear helpful to owners. The proposed addition in the standard form of a 'Slow Steaming Clause', in response to the increased cost of bunkers, will be welcomed by charterers.
- As part of the standard form, we may also see an acceptance of electronic bills of lading, with the addition of the BIMCO Electronic Bills of Lading clause.

The current indications are that the new NYPE form will be available later this year. A copy of the current draft of NYPE 2014 is available to download from the [BIMCO website](#). The industry is invited to comment on any of the proposed revisions.

# Staff spotlight



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## **What was your first job in the industry?**

Before joining The Standard Club, I worked as a Claims Executive at another IG P&I club from 2006–2009. I worked in the Eastern Syndicate, dealing with members from the Middle East, Iran and India.

## **What was it that interested you to P&I?**

The study of international trade law.

## **What is your current job and how does it differ from your first job in the industry?**

I started out in the industry as a Claims Assistant but was quickly promoted to being a Claims Executive. I went into private practice for a few years before joining The Standard Club as a Claims Executive and have continued to progress and handle more complex and difficult matters.

## **What is the most important thing a club can do for its members?**

To be available whenever the member requires assistance. This is our fundamental service guarantee and means that, as claims handlers, we should be available around the clock.

## **What is the most important lesson you've learnt in your P&I career?**

It is imperative we do not forget that we are not a commercial insurance company, but a mutual P&I club. I have learnt that the member is the most important person and must be given due consideration in any given circumstance.

## **What is the highlight of your P&I career?**

I have had several high points/achievements in my career, including travelling to important events around the world as I enjoy marketing and business development. Successfully defending members' interests also fills me with a sense of achievement. The recent ruling for the **ATLANTIK CONFIDENCE** was a highlight in my career as this matter set a legal precedent that will go on to benefit other clubs and members.

## **How do you think the industry has changed since you started working in it?**

I think the industry has continued to evolve, especially with the launch of new products and services for members. We are always creating new ways of servicing the members' needs.

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