www.standard-club.com

Standard Bulletin

December 2015

The Standard
for service and security

The Standard

Jason Wee
Senior Claims Executive
+65 6506 2875
jason.wee@ctplc.com

Word from the Editor

We sometimes take it for granted that we live in a time when so much information is readily available. If knowledge is the accumulation of information, wisdom is knowing how to apply the information to make good decisions.

As the new editor of the *Standard Bulletin*, I will strive to bring you news and issues that are interesting, informative, that also guide good decision-making.

In this regard, each of the next seven editions of the *Standard Bulletin* will centre on one key P&I risk. This first edition will highlight cargo issues, following an analysis of claims data which revealed that cargo claims accounted for about half of the total number of claims received by the club between 2009 and 2014.

Niccole Lian's article on flat racks and indemnity provisions illustrates that one size does not, in fact, fit all. Contracts of carriage need to be reviewed periodically to ensure that the terms truly reflect changes over time in the practices and operations of the member.

Giorgio de Rosa offers his views on the new BIMCO Fumigation Clause which was launched in September.

Laura Atherton takes another look at the obligations of owners and charterers to provide timely notice of claims to protect the time bar pursuant to the Inter-Club New York Produce Exchange Agreement, more familiarly known as the ICA.

Akshat Arora demystifies paper shortage claims in bulk cargo and offers some practical advice to prevent such occurrences, especially when discharge involves notoriously difficult ports.

This edition also looks in on the ongoing refugee crisis in Europe, which raises specific issues for shipowners. *Reuters*, quoting the United Nations refugee agency UNHCR, reported that a record 218,394 migrants entered Europe by sea in October 2015, which is roughly the same number as during the whole of 2014[1]. Italian lawyers, Enrico Vergani and Chiara Falasco, provide their thoughts in a joint article which discusses the exposure to cargo claims that is faced by food carrier vessels from the presence of refugees on board ships.

In this edition

Our spotlight feature in this bulletin introduces Kate Butlin, Hull Underwriter from The Standard Syndicate.

We also highlight The Standard Club-sponsored debate on the future of London as the global shipping service centre at the London International Shipping Week in September. The debate featured luminaries including the Mayor of London, Boris Johnson, and the newly elected President of the Singapore Shipping Association, Esben Poulsson.

I thank the authors for their contribution. Last but not least, as this is the last edition for 2015, I would like to take this opportunity to wish each of our readers a very merry Christmas and a happy New Year.

1 *October's migrant, refugee flow to Europe roughly matched the whole of 2014, The Star Online*, accessed on 13 November 2015

A cautionary tale of flat racks

Niccole Lian
Senior Claims Executive
+65 6506 2857
niccole.lian@ctplc.com

In a case where cargo damage occurs due to insufficient lashing of flat racks, which party should be held responsible? This article looks at the considerations.

Flat racks are ideal for large and heavy cargoes that cannot be loaded into containers. They consist of a floor structure with a high loading capacity composed of a steel frame, a softwood floor and two end walls, which may either be fixed or collapsible.

The scenario

A shipper sends flat racks already laden with large, high value pieces of machinery, to the load port terminal. Prior to loading on board the ship, the flat racks are sighted by the officer in charge of the loading operations. On a visual inspection, the packing and lashing appear adequate. The cargo is loaded on board and a clean bill of lading is issued. During the voyage, the ship encounters rough weather, causing the lashings on one of the flat racks to give way and the cargo to topple onto other laden flat racks.

The claim

Cargo damage results and the receiver claims against the cargo insurance policy. The cargo underwriters then pursue a recovery against the carrier in the local court at the port of discharge. By application of the local law and practice, the carrier is found liable for the cargo damage.

After negotiations, the carrier amicably settles the cargo insurers' claim. So far, the tale is unremarkable.

The indemnity

Next, the carrier seeks to recover from the shipper by way of an indemnity founded upon the terms of the contract of carriage which is properly subject to English law. The technical evidence suggests that the cargo damage may well have been caused by improper and insufficient lashing by the shipper.

The terms of carriage, evidenced by the bill of lading, include an indemnity clause, which provides that where the carrier has not filled, packed or stuffed the container:

a) The carrier is not liable for loss, damage or delay to the cargo *caused by matters beyond his control* including the manner in which *a container* has been filled, packed or stuffed; and

b) The shipper shall indemnify the carrier for any loss, damage, liability of expense whatsoever and howsoever arising, caused by the manner in which *the container* has been filled, packed or stuffed.

The issues

In order for the carrier to succeed in its claim for an indemnity against the shipper, it has to satisfy the following conditions:

i) That the definition of 'container' extends to and applies to flat rack containers; or

ii) That the lashing of the flat rack container at the time of loading was a matter beyond the carrier's control.

It is not clear whether these conditions are satisfied in a scenario such as this, and a case could be made for both the carrier and the shipper.

In favour of the shipper, it could be argued that the definition of 'container' is not extensive enough to include flat rack containers. Following this reasoning, the carrier would then be obliged to show that it had no control over the lashing of the flat rack, in order to satisfy the requirements of the above indemnity provision. This means that the carrier has to show that it was not reasonably able to spot the improper and insufficient lashing that the shipper had supplied. In this case, the carrier's officer in charge of the loading operations may well be deemed to have had the opportunity to, and should have spotted the poor lashings.

In favour of the carrier, there is an arguable view that the definition of 'container' is wide enough to include flat rack containers. Once the carrier is able to show that it did not fill, pack or stuff the containers carrying the cargo, the indemnity provision seems to be satisfied. This more liberal position takes into consideration the commercial realities of transporting flat racks. In practice, the shipper presents the flat racks at the terminal and if the visual inspection by the officer-in-charge of loading operations shows no obvious damage to the exterior packing of the cargo, the carrier loads the flat racks 'as is'. According to this view, it is commercially impractical and contrary to international practice to require carriers to perform in-depth inspections over each flat rack tendered to the extent that the carrier would be obliged to ascertain the sufficiency of the lashings so supplied.

Lessons learnt

No court has ruled upon which interpretation of the indemnity clause should prevail, as far as we know. To ensure that members do not inadvertently suffer losses due to a shipper's negligence, it is recommended that key definitions, including whether 'container' includes a 'flat rack' container, and the indemnity provisions in the contract of carriage be reviewed, and if necessary amended, in order that they are sufficiently unambiguous and protective of the member's interests as intended.

Protecting time under the ICA

Laura Atherton
Senior Claims Executive
+44 20 7522 7592
laura.atherton@ctplc.com

The Inter-Club New York Produce Exchange Agreement (ICA) regime, if expressly incorporated into a time charterparty on NYPE or Asbatime forms, is a means of apportioning liability for cargo claims. It allows parties to resolve liability for cargo claims between owners and charterers quickly and at minimal cost. However, this is only the case if the party initially liable for the cargo claim notifies the other party 'in time'.

ICA provisions

The ICA, which was first formulated and entered into by clubs in 1970, has undergone three revisions[1]. Following the 1996 amendment, the ICA was renamed the Inter-Club New York Produce Exchange Agreement 1996 (ICA 1996). Clause 2 of the ICA 1996 provides that:

– *'The terms of this Agreement shall apply notwithstanding anything to the contrary in any other provision of the charterparty; in particular the provisions of clause 6 (time bar) shall apply notwithstanding any provision of the charterparty or rule of law to the contrary.'*

Clause 6 ICA provides that:

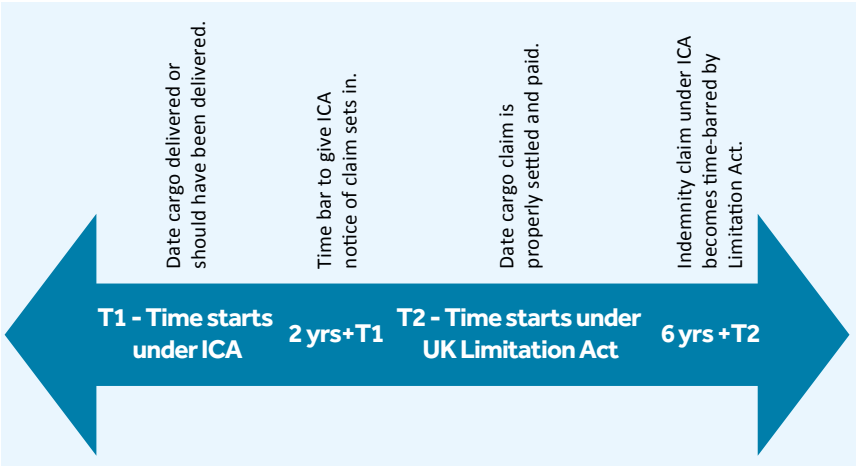
– *'Recovery under this Agreement by an Owner or Charterer shall be deemed to be waived and absolutely barred unless written notification of the Cargo Claim has been given to the other party to the charterparty within 24 months of the date of delivery of the cargo or the date the cargo should have been delivered, save that, where the Hamburg Rules or any national legislation giving effect thereto are compulsorily applicable by operation of law to the contract of carriage or to that part of the transit that comprised carriage on the chartered vessel, the period shall be 36 months. Such notification shall if possible include details of the contract of carriage, the nature of the claim and the amount claimed.'*

Both clauses 2 and 6 have been preserved in the Inter-Club New York Produce Exchange Agreement 1996 as amended September 2011 (ICA 2011). Therefore, any authorities on these points with regard to the ICA 1996 should equally apply to the ICA 2011.

Whilst the ICA sets out the relevant notice obligations and the time bar for providing such notice, it must be mentioned that the time bar under English law for the parties to commence proceedings in relation to their indemnity claim is the same as that for breach of contract under the Limitation Act 1980, which is six years from the date when the cause of action accrued. This is calculated as when the underlying cargo claim is properly settled and paid[2].

1 *24 August 2011, Standard Club Circular, Inter-club New York Produce Exchange Agreement 1996 (as amended September 2011)*. The ICA was amended in 1984, 1996 and 2011

2 See London Arbitration 32/04



Visually, the time bars could be represented as above.

By the application of clause 2, the time bar provision in clause 6 will prevail over any other time bar mentioned in the charterparty that might appear to be in conflict. This was confirmed in the 2011 English High Court decision in the *Genius Star 1*[3].

We look at this case in detail below.

Background

In this case, the ICA 1996 had been expressly incorporated into the charterparty, which was itself subject to English law and jurisdiction. Clause 39(2) of the charterparty provided that:

'Any claim must be made in writing and the claimant's arbitrator appointed within 12 months of final discharge and where this provision is not complied with the claim shall be deemed to be waived and absolutely barred.'

The sub-charterers settled a cargo claim with cargo interests and sought to recover the settlement from the charterers. The charterers, in turn, passed the claim up the charterparty chain to the owners. Both the sub-charterers and charterers notified their claim within 24 months of delivery in accordance with the provisions of the ICA 1996, but failed to commence arbitration proceedings within 12 months in accordance with clause 39(2) of the charterparty. The owners argued that the claim was, therefore, time-barred.

Comment

Whereas clause 6 of the ICA dealt with the time bar for notification of a claim, clause 39(2) of the applicable charterparty provided for the commencement of proceedings in relation to that claim. While these provisions obviously relate to different requirements, the applicability of the latter in relation to an indemnity for a cargo claim would preclude the applicability of the former in this case.

Judgment

The arbitrators in the first instance, and then the Commercial Court on appeal, had to decide whether the one-year time limit in clause 39(2) applied to cargo claims that were to be settled and apportioned in accordance with the ICA 1996. Applying the test of what a 'reasonable man having the background knowledge available to both owners and charterers' would understand, both held that, applying clause 2 of the ICA, the one-year time limit under clause 39(2) did not apply to claims under the ICA. These had their own time limit under clause 6 and the charterers and sub-charterers, having notified the counterparty appropriately under the ICA, then had the benefit

3 M.H. Progress Lines SA v Orient Shipping Rotterdam BV and other, The Genius Star 1 [2011] EWHC 3083 (Comm)

of the usual six-year limitation period for bringing their recovery claims.

Therefore, while in disputes *not covered* by the ICA, other time bar provisions stated in the charterparty would take effect, where a cargo claim is *to be apportioned under the ICA*, the 24-month time bar in clause 6 will prevail.

Application

The ICA regime makes sense on a commercial level. Notice of the cargo claim must be given within two years of the date of delivery of the cargo, or the date when the cargo should have been delivered, except where the Hamburg Rules apply (where the period is 36 months to take into account the two-year time bar for cargo claims under those rules). As such, the ICA time bar seeks to be one year after the underlying cargo claim should expire. Furthermore, the time starts running from delivery rather than discharge.

A carrier who is potentially liable for a cargo claim under a bill of lading should, therefore, have plenty of time after being notified of a cargo claim to notify the relevant party from which to seek apportionment or recovery under the ICA.

Conclusion

It is of utmost importance for members to provide adequate and timely notice of a potential ICA claim under their charterparties in order to avoid a time bar of any recovery claim they may have.

Such notice should contain as much information as possible, but should, as best practice, at least include details of the contract of carriage, nature of the claim and the amount claimed. A full example can be found below, although it is understood that not all of the information will always be available initially.

Draft notice

To: Name of owner/charterer *(with logical amendments)*
Vessel:
Voyage:
Bill of lading:
Port of loading:
Port of discharge:
Nature of cargo claim:
Amount claimed:

Dear Sirs,
We, owner of the [ ] hereby place you, the charterer, on notice pursuant to the ICA incorporated into the charterparty dated [ ] of a potential claim under the above-mentioned bill of lading.

Furthermore, pursuant to the applicable charterparty and the ICA, we place you, the charterer, on notice for full liability in this matter and reserve the right to hold the charterer liable to indemnify the owner against any and all costs, losses and liabilities arising out of and in connection with this matter.

The owner's rights are fully and expressly reserved.

The BIMCO Cargo Fumigation Clause

Giorgio De Rosa
Claims Executive
+65 6506 2801
giorgio.derosa@ctplc.com

Most charterparties do not specifically address the risks and costs arising from cargo fumigation operations. It is unsurprising, therefore, that from time to time, following cargo fumigation, the charterer and owner are forced to confront the issue as to who is responsible for the time, cost and other liabilities that arise. A new BIMCO clause has thankfully clarified the issue.

BIMCO clause

The Baltic and International Maritime Council (BIMCO) Cargo Fumigation clause (the BIMCO clause), introduced on 15 September 2015, provides clear allocation as to the responsibilities, risks and costs arising from cargo fumigation operations on board ships.

The introduction of the BIMCO clause is particularly welcomed since no international regulation or model clause has, until now, addressed these issues.

A further reason to welcome the introduction of the BIMCO clause is its adoption of the non-binding recommendations of the International Maritime Organization (IMO), which set out the best practices and procedures for safe cargo fumigation operations[1]. This can mitigate the risk of fire and explosion that accompany cargo fumigation, such as the explosion in on board the *MV Theofylaktos* at Rio Grande Outer Anchorage, Brazil, in December 2012[2].

The BIMCO clause is tailored to the dry bulk sector (both bagged and free-flowing agricultural cargoes) and is confined to issues of cargo fumigation only. It can be adapted for both voyage and time charter-parties.

Observations on the BIMCO Clause

The full text of the BIMCO clause may be found on *BIMCO's website*. Material extracts from the BIMCO clause appear below.

Option to fumigate

(a) The Charterers shall have the option to fumigate the cargo in the Vessel's holds in port and/or at anchorage and/or in transit. Such fumigation shall be performed always in accordance with IMO Recommendations on the Safe Use of Pesticides in Ships applicable to the Fumigation of Cargo Holds, MSC.1/Circ.1264 (IMO Recommendations) and any subsequent revisions[3].

The onus is on the charterer to declare to the owner whether it wishes to exercise its option to fumigate the cargo. The fumigation may be carried out in port or while the ship is in transit.

The cargo fumigation operations shall be performed pursuant to the IMO Recommendations. In the event that local regulations are in conflict with the IMO Recommendations, the *BIMCO Special Circular* suggests that the IMO Recommendations should take precedence, except where the local regulations apply a stricter regime.

Throughout the fumigation operations, the master's right to intervene where he considers that the vessel's safety

The example below is not untypical

- Five days are allowed for loading (laytime);
- Four days and four hours are used, i.e. 20 hours saved (despatch);
- 12 hours are subsequently used for fumigation.

In the absence of a specific contractual provision, which party ought to bear the cost and time incurred for cargo fumigation?

may be compromised remains intact.

Charterers' costs and expenses
(b) Fumigation shall be at the Charterers' risk and responsibility. Any costs and expenses incurred in connection with or as a result of such fumigation, including but not limited to gas detection equipment, respiratory protective equipment and crew training, shall be for the Charterers' account. The Charterers shall indemnify the Owners for any liabilities, losses or costs arising out of or resulting from cargo fumigation.

(c) If local authorities or IMO Recommendations require the crew to be accommodated ashore as a result of fumigation ordered by the Charterers, all costs and expenses reasonably incurred in connection thereto including, but not limited to, transportation, accommodation and victualling shall be for Charterers' account.

The above paragraphs make plain that the costs and expenses of the fumigation operation are for the charterer's account. The charterer shall also indemnify the owner in respect of liabilities, losses or costs resulting from cargo fumigation.

The costs and expenses typically incurred when fumigation operations are carried out when the ship is in port, examples of which are described at para (c) above, are to be borne by the charterer, provided they are reasonably incurred.

Disposal for charterers' account
(d) At the discharging port or place all fumigant remains, residues and fumigation equipment shall be removed from the vessel as soon as possible and disposed by the Charterers or their servants at Charterers' risk, responsibility, cost and expense in accordance with MARPOL Annex V or any other applicable rules relating to the disposal of such materials.

The charterer is responsible for the removal and disposal of fumigant remains, residues and fumigation equipment.

Loss of time
Under paragraph (e), loss of time resulting from cargo fumigation would typically be for the charterer's account. Paragraph (e)(i) is tailored for time charterparties whilst paragraph (e)(ii) applies to voyage charterparties.

Time charterparty:
**(i) All time lost to the Owners in connection with or as a result of fumigation performed in accordance with sub-clause (a) shall be for Charterers' account and the vessel shall not be off-hire.*

According to paragraph (e)(i), the ship remains on hire during fumigation operations.

Voyage charterparty:
**(ii) All time lost to the Owners in connection with or as a result of fumigation performed in accordance with sub-clause (a) prior to commencement of laytime and/or after cessation of laytime or time on demurrage shall be considered as detention and shall be compensated by Charterers at the demurrage rate stipulated in the Charter Party. Any unused laytime shall be deducted from such detention, in which case any despatch payable shall be reduced accordingly.*

**Sub-clauses (i) and (ii) shall apply to time charter parties and voyage charter parties, respectively.*

In the voyage charterparty scenario, paragraph (e)(ii) provides that if fumigation is performed prior to the commencement and/or after cessation of laytime or time on demurrage, time lost to the owner is to be treated as detention and compensated for by the charterer at the applicable demurrage rate.

1 See also *Standard Cargo Bulletin, March 2011, page 17*, which sets out some guidelines when carrying out cargo fumigation operations.

2 See *Report of the Marine Safety Investigation Unit of Transport Malta (Report No.: 21/2013)*.

3 Full circular is available on the *MPA website*

Evidence as to the condition of cargo
(f) The exercise by the Charterers of the option to fumigate the cargo under this Clause shall not be construed as evidence as to the condition of the cargo at the time of shipment, and the Master or the Owners are not to clause bills of lading by reason of fumigation only.

By this clause, the owner agrees not to clause bills of lading simply by reason of the fact that fumigation is to be/has been carried out.

Conflict of provisions
(g) In the event of a conflict between the provisions of this Clause and any implied or express provision of the Charter Party, this Clause shall prevail to the extent of such conflict, but no further.

This provision prevents conflicts with other provisions within the subject charterparty, by giving precedence to the BIMCO clause.

Conclusion

Returning to the scenario on the previous page, it would seem that, if the BIMCO clause were incorporated into the (voyage) charterparty, the issue may be resolved as follows:

- *Five days are allowed for loading (laytime)*
- *Four days and four hours are used, i.e. 20 hours saved (despatch)*
- *12 hours are used for fumigation*

The 12 hours for fumigation will 'count' and therefore the despatch (payable by the owner to the charterer, depending on the terms of the charter) will be reduced from 20 hours to only 8 hours.

The adoption of the BIMCO clause is to be welcomed. Its adoption will bring about greater certainty in the allocation of risks and obligations between charterers and owners in the hope of reducing the number of disputes that arise from fumigation operations.

‘Paper’ shortages: causes and preventive measures

Akshat Arora
Marine Surveyor
+65 6506 2809
akshat.arora@ctplc.com

The occurrence of in-transit cargo losses is not uncommon. In the case of cargo shipped in bulk, the cargo shortage could be either ‘real/actual’ or what is widely referred to in the trade as a ‘paper’ shortage. This article looks at ways to minimise the latter.

Actual loss versus a paper shortage

Common causes of a **real or actual** loss of cargo include the following:

- Inherent vice of the cargo, for example, reduction in weight of the cargo during carriage due to condensation, evaporation or shrinkage.
- External factors, for example, leakages from grabs, windage[1], sweepings[2], admixture[3] or theft.

A **‘paper’** shortage, on the other hand, arises from inaccuracies in measurements, differing methods of measurement and/or miscalculations in the quantity of cargo. This article explains how a paper shortage might occur and suggests preventive measures to avoid such occurrences.

The following hypothetical case study is illustrative.

Case study

The *Clash*, a bulker, is fixed for a voyage to carry a cargo of fertiliser in bulk from China to India. According to the draught survey at the load port, and the bill of lading issued, total cargo loaded is 78,400mt.

The results of the joint discharge survey, which is undertaken by the Master, receivers and port-appointed surveyors, are as follows:

- The amount of cargo discharged according to the ship’s final draught survey is 78,420mt.
- The amount of cargo discharged according to shore-side figures is 78,065mt.
- There is, therefore, an apparent cargo shortage of 335mt. (equivalent to 0.4%) if you look at the shore-side figures.

The *Clash* subsequently receives a cargo shortage claim in the amount of $100,000 from cargo interests. In its defence, ship’s interests contend that the claim is a paper shortage, as opposed to an actual/real shortage. The following points are raised in negotiations with cargo interests.

Analysis

Measurement errors in draught surveys

The ship’s interests contend that the draught readings taken at the load and discharge ports, which formed the basis for calculating the quantity of cargo loaded and discharged, are accurate and were recorded in accordance with standard operating procedures.

1 Windage is the amount of dust-like particles (chaff) that is blown out of the cargo during loading or discharging.

2 Sweeping is the cargo collected after the cargo operations. It should be delivered to receivers over the weighing system.

3 Admixture is mixing of different cargoes or different grades of the same cargo due to inadequate separation between them.

Accordingly, they maintain that the draught survey results should be relied upon to show that there is, in fact, no cargo shortage.

It is significant that, in this example, a misreading of draught by about 4cm could potentially result in a miscalculation of total quantity of cargo on board by about 300mt.

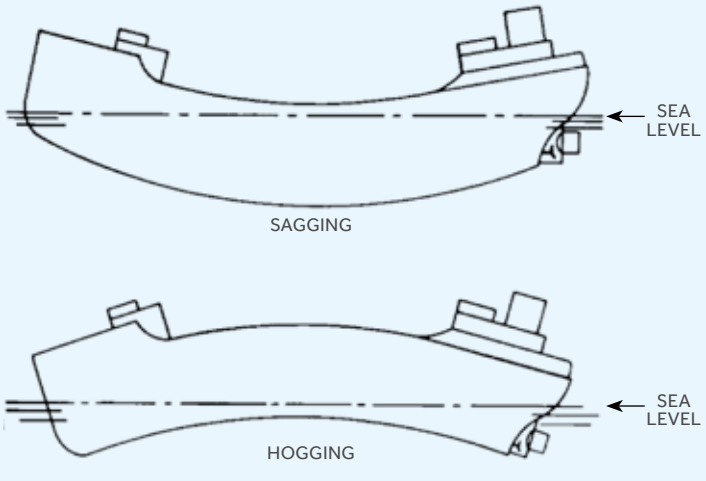
With this in mind, it is vital that draught surveys are done according to best practice to ensure accurate readings:

- During the draught survey, the ship should remain as upright as possible when readings are taken at six different locations along the ship; her trim[4] should not exceed her maximum[5]; and the water density should be accurately measured by means of a certified hydrometer. Allowances also ought to be made for hogging and sagging.
- We recommend that the draught survey report accurately records the prevailing conditions of sea and swell, which could impact upon the readings.
- Ideally, where the discharge port is notorious for spurious cargo shortage claims, we further recommend that the member carries out joint draught surveys with charterers and shippers/receivers at both ends (load and discharge) with full supervision of the crew.
- In the case of the discharge surveys, the surveyor representing the owner/member should be in attendance before the hatches are opened.

Different cargo calculation methods at load and discharge ports

A second possible cause for the apparent difference in cargo volume is the fact that, whilst the ship relies upon the draught surveys to calculate the cargo loaded and discharged, cargo interests rely upon the readings of the weighbridges[6] at the discharge port to derive the landed cargo figures.

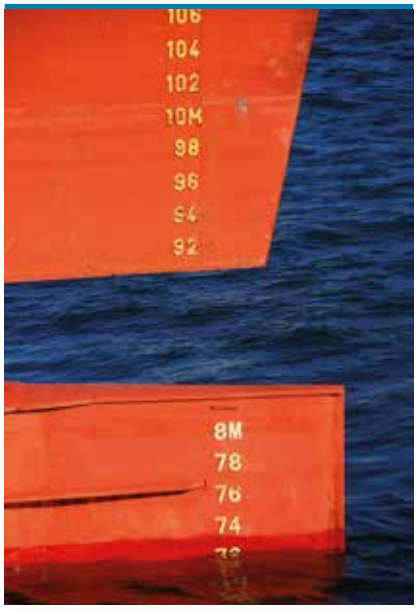
Occasionally, the shippers and/or customs authorities insist that the bill of lading and mate's receipt be issued based on the shore figures (rather than the ship's figures). This is to be resisted



4 Trim is the difference between the ship's forward and aft draughts.

5 As provided in the ship's stability book and ballast sounding tables

6 Other shore-based methods of calculating quantity of cargo loaded or discharged include silo scales and belt scales



and, ideally, the terms of carriage (applicable charterparty) should provide that the method of cargo measurement at the load and discharge ports be the same, in order to remove any potential variances caused by different methods of measurement.

In this case, the owners challenge the cargo interests to provide the shore scales calibration certificates, which would evidence the shore scale's accuracy. Additionally, the meticulous draught readings serve as vital evidence to resist the shortage claims.

Incorrect value of 'constant' applied

A ship's '*constant*' is the difference between her designed lightship displacement[7] and her actual displacement when empty. The constant varies over the life of the ship. Some causes that lead to a change in ship's constant include accumulation of sludge or mud inside the tanks and changes in her lightship displacement following repairs or modifications to her hull. In calculating the amount of cargo loaded, the constant is taken into account.

If an inaccurate constant is applied to the calculations, the amount of cargo calculated will also be inaccurate. Preventive measures to ensure that the correct constant is applied include measuring the initial draught survey at the load port when the ship is empty or comparing it with the readings from the previous three to five voyages to ensure that the correct constant figure is applied for the duration of the ship's stay in port.

In this case study, the owner had to concede liability because there were substantial inaccuracies in the value of the constant applied, which is unusual. Accordingly, the inaccuracy of the constant calculation affected the reliability of the ship's draught surveys and, ultimately, her calculation of the cargo discharged.

In the final analysis, the shipper's shore scales were considered to be more reliable and the cargo interests succeeded on the shortage claims.

Preventive measures

To avoid cargo claims for paper shortages, we recommend the following preventive measures:

i) Determine and ensure that the ship's correct constant is applied in calculating the cargo loaded and discharged.
ii) Ensure accurate readings are taken of the ship's draught at both load and discharge ports, and retain complete records of the procedure followed during the surveys.
iii) If necessary, appoint an independent surveyor of repute at both ends to conduct the draught surveys.
iv) Unless agreed otherwise, ensure that the hatches are sealed in the presence of the surveyor prior to leaving the load port. The seal must be kept intact during the voyage and should be opened at discharge port only after the joint draught survey.
v) If the carrier has sufficient bargaining strength, it may consider clausing the bill of lading with 'weight and quantity unknown' or 'said to contain' which could (depending on the local law of the bill) reduce the *prima facie* evidential value as to the statement of quantity on the bill of lading and may thereby afford some further protection to the carrier in some jurisdictions.
vi) The carrier may also consider including an express customary trade allowance clause in the charterparty and the bills of lading to allow for cargo deviation of +/- 0.5%. Again, whether this is possible will ultimately depend upon the carrier's bargaining strength in the given market/trade.

7 Lightship displacement is the weight of the ship excluding cargo, fuel, water, ballast, stores, passengers, crew, but with water in boilers to steaming level

Illegal immigrants and European Food Law – new challenges for the carrier

Enrico Vergani & Chiara Falasco
Studio Legale Garbarino Vergani
+39 010 5761161
enricovergani@garbamar.it

The recent increase in illegal immigration via sea voyage across the Mediterranean and multimodal carriage through Europe is having a wide impact. This article looks specifically at the impact of the spike in illegal immigration on food carriers and their particular issues.

Introduction

Ships operating in the Mediterranean are exposed to the risks of illegal immigrants coming on board. Often, they are called upon by the coast guards to effect salvage operations or provide support to the navy to save the lives of illegal immigrants stranded at sea. Most charterparty forms provide for liberty to deviate for the purpose of saving life and property (e.g. NYPE 1946, NYPE 1993, Shelltime, BP Time 3) and the costs incurred for the deviation to save lives are usually covered by the club (with the exception of any 'lost' charter hire). However, the continuous support sought from merchant ships to rescue immigrants at sea has a negative impact.

Food carriers are often specifically targeted by stowaways, as the goods on board can aid their survival. This article considers the consequences and the impact on carriers' operations and obligations when they take on board illegal immigrants either voluntarily, when they are ordered by the coastal authorities, or involuntarily, as in the case of stowaways.

The controls

Within the framework of food safety law, EU regulations impose a strict and continuous control on food intended for human consumption during all stages of the food supply chain, namely: the production, distribution and marketing of food, including the transportation of food.

There are three key regulations to note:

- Regulation (EC) No 178/2002, which lays down the general principles and requirements of food law, establishing the European Food Safety Authority.
- Regulation (EC) No 882/2004, which concerns official controls to ensure compliance with feed and food law.
- Regulation (EC) 852/2004 on the hygiene of foodstuffs, dated 29 April 2004, which entered into force on 1 January 2006. This regulation imposes responsibility for food safety upon food business operators throughout the food chain. In particular, Chapter IX provides that: *'At all stages of production, processing and distribution, food is to be protected against any contamination likely to render the food unfit for human consumption, injurious to health or contaminated in such a way that it would be unreasonable to expect it to be consumed in that state.'*

In addition to the above, international legislation on basic standards of hygiene such as *Codex Alimentarius – Recommended International Code of Practice, General Principle of Food*

Hygiene (CAC/RCP 1-1969) binds all members of the World Trade Organization (WTO), including the EU.

In most cases, the living conditions brought about by illegal immigrants seeking temporary shelter in the confined space of a container or a truck, would breach the conditions of food carriage and standards of hygiene prescribed in the European food safety legislation referred to above.

Cargo interests dealing with food are often certified by ISO 2200:2005, which is an internationally recognised standard of safety management system for organisations in the food supply chain and which aims to ensure that food supplied is safe at the time of human consumption. These obligations of the cargo interests are invariably imposed upon the carrier up the contracting chain by their incorporation into the contracts of carriage.

Pursuant to the above legislation, when food is considered unsafe, *business operators are obliged to withdraw or recall it,* to avoid any risk of unsafe food.

The effect of immigration

Although, at this stage, we do not have decided cases from which guidance can be sought, there are reasonable grounds to assert that the entry of illegal immigrants into trailers or containers represents in itself a breach in the control of the food supply chain. As such, it compromises the safety of all the cargo, and under these circumstances, the entire cargo is at risk of becoming a total loss. This is a substantial issue for the carrier. Members trading in the Mediterranean or performing multimodal transport services in and around Europe should be aware that in such circumstances, cargo interests will have no alternative other than to withdraw or recall the contaminated food and, in turn, claim appropriate damages against the carrier. Successfully defending such cargo claims may prove to be difficult in the majority of circumstances.

The Standard Club debate at London International Shipping Week reveals that the winds of change are blowing

As sponsors of London International Shipping Week, The Standard Club hosted a complimentary breakfast debate 'London – the global shipping service centre in 2050?' on 9 September 2015.

The debate comprised arguments 'for' and 'against' the motion, and featured key figures in the industry as participants, followed by a vote from the audience to canvas views on London's future position in the shipping services market.

Chairing the debate was Julian Bray, Editor-in-Chief of *Tradewinds*.

Martin Stopford, who is both a non-executive President at Clarkson Research Services and a British economist, and Inga Beale, CEO of Lloyd's of London, represented the campaign 'for' London being the global shipping service centre in 2050, whilst Sabrina Chao, Chairman of Wah Kwong Maritime Transport Holdings Ltd, and Esben Poulsson, President of the Singapore Shipping Association, represented the 'against' campaign.

There was also a video address from Boris Johnson, MP, Mayor of London, in support of the motion.

Johnson argued that one in five ships globally is insured in London and that the city leads the world in its insurance expertise. He succinctly summarised by saying: "When your ship runs into trouble, you want to be insured in London." Johnson's call in support of London was further developed by the team 'for' the motion, who posited that London would continue to be the pre-eminent centre of shipping services because of its ability to adapt and innovate in modern business.

Nobody would question that London currently has a wealth of maritime expertise and leads the world in hull insurance, and that it is often *English* law that is applied in shipping and commerce contracts worldwide. The 'for' argument contended that since the UK maritime service industry has weathered many changes over the years and continues to excel and lead the world, this resilience would secure its future as the leading global shipping service centre.

The audience, who comprised representatives from the global shipping industry, was asked to vote on the motion at the beginning and end of the session. At the first vote, there was clear support for London with an overwhelming 90% of the audience voting 'yes' in favour of London remaining as the global shipping service centre in 2050. However, after the panel debate, 34% voted 'no' to the motion.

This swing in opinion may have been due to the strong arguments advanced by the opposition, who contended that London is reducing in significance at the same time as Asia is growing.

The opposition pointed to the fact that London is no longer the finance capital for shipping, with few London banks now providing shipping finance. They also argued that the service providers of the future will locate near to shipowners, since London no longer provides a competitive tax environment for shipowners and ship brokers. Ship ownership is already relatively low in the London market, with many companies moving East.

The opposition further bolstered its arguments by highlighting the fact that both Hong Kong and Singapore are catching up with London as preferred seats of arbitration and dispute resolution, with both enjoying speed, economy and efficiency in dispute resolution, stemming from a burgeoning and vibrant maritime legal community in Asia. They summarised by arguing that, in the future, there will not be one global centre for shipping, but three or four of which at least two or three will be based in Asia.

Jeremy Grose, Chief Executive, concluded the debate by saying:

"London is currently the pre-eminent global shipping service centre. However, it is clear that the winds of change are blowing. The Asian shipping centres are growing and with more of the world's fleet controlled from there, it is clear that London needs to continue to support its maritime services industries if it is to remain a major player."

If you have any questions about the event, please email: *standardclubevents@ctplc.com*.

Spotlight

Kate Butlin
Hull Underwriter
The Standard Syndicate
+44 207 767 2885
kate.butlin@syndicate1884.com

What was your first job in the industry?
I actually started my career selling taxi insurance in a call centre in Leeds! I started working in marine cargo insurance in 1997, when I first moved to London, but since 2000, I have focused on marine hull, first at the Jonathan Jones' Lloyd's syndicate and then Talbot Syndicate.

What was it that interested you to Lloyd's?
Lloyd's is a unique platform for handling international insurance risks, built around its roots as a leading marine insurance market. Lloyd's is a vibrant place to work and I work in an iconic building. As a Lloyd's Syndicate Underwriter, I am privileged to have built close, long-lasting relationships with both brokers and fellow underwriters.

What is your current job and how does it differ from your first job in the industry?
My current job involves building and managing a marine hull portfolio at The Standard Syndicate. It is a very exciting and different prospect than my first job in the hull market, which involved maintaining an existing portfolio.

What is the most important thing The Standard Syndicate can bring to the Lloyd's market?
The Standard Syndicate offers a fully comprehensive product to members of The Standard Club and non-members. We offer a broad range of marine products. Commercial exclusions will apply. Through our strong relationship with The Standard Club and our underwriters' breadth of marine experience, The Standard Syndicate has close ties with our clients. The Standard Club has over 130 years of providing insurance solutions to the marine industry.

What is the most important lesson you've learnt in your Lloyd's career?
To trust your own opinion when reviewing a risk and to make sure that you read the contract carefully and are clear on what you are actually covering.

What is the highlight of your Lloyd's career?
My highlight is definitely the opportunity I have been given with The Standard Syndicate to build up the marine hull portfolio. The support we have had from both club and non-club members has exceeded my expectations.

How do you think the industry has changed since you started working in it?
There is a lot more capacity in the market now, which obviously has an impact on insurance pricing levels. The Lloyd's market is constantly evolving, which is why it remains such a dynamic place to work.

The Standard Syndicate

Web alerts The Standard Club issues a variety of publications and web alerts on topical issues and club updates. Keep up-to-date by visiting the News section on our website **www.standard-club.com**

@StandardPandI
The Standard P&I Club

This Standard Bulletin is published on behalf of
The Standard Club Ltd by the managers' London agents:
Charles Taylor & Co. Limited Standard House,
12–13 Essex Street, London, WC2R 3AA, UK
Registered in England No. 2561548

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

Please send any comments to the editor, Jason Wee.
E: jason.wee@ctplc.com T: +65 6506 2875

Charles Taylor