STEAMSHIP MUTUAL

newsletter

Sea Venture

issue 10

Contents

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Feedback and suggestions for future topics should also be sent to this address.

Introduction

The new look Sea Venture is now entering its fourth year. During this period shipping markets have enjoyed an unprecedented boom with vessel earnings at or around their historic peaks in many markets. As the strength of the new building order book indicates, the market view is one of continued optimism with only a minority of commentators advocating caution

A consequence of the booming shipping industry has been increased costs; both in terms of asset values, and operational and claims costs. The cost of claims and related disputes is discussed in the Club's Mid Year Review:

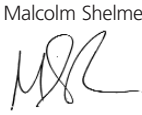
www.simsl.com/MidYearReview.html

as is the Club's revised approach to claims records and future risk profiles and their relevance to the premium increases sought by Steamship Mutual at the forthcoming renewals. Higher claims levels oblige the P&I Clubs to raise their rates and, at the time of publication, Steamship Mutual is in the process of agreeing terms for the forthcoming 2008/09 policy year on the basis of the 15% standard increase set by the Board. While a reduction in claims levels for the year ahead would be most welcome, the strong market outlook remains one that demands a cautious underwriting approach.

This edition of Sea Venture includes nine articles from Steamship Mutual, covering a variety of subjects including recent arbitration and court decisions on frustration, options to extend charterparties, permanent disability claims, pollution, the conversion of VLCCs to VLOCs, and loss prevention issues. There are also external contributions from US and English solicitors and experts on topics including punitive damages, whether an agreement to arbitrate is valid if the contract in which the agreement is incorporated is not, the carriage of foodstuffs and deepwater exploration.

As ever we are grateful to those that have contributed to this edition of Sea Venture and welcome any feedback or suggestions for topics for future editions.

Malcolm Shelmerdine



14th February 2008.

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Steamship Mutual Members Receive Top Seatrade Awards

On 5 November 2007 Seatrade held their Annual Middle East and Indian Subcontinent Awards ceremony in Dubai.

The Awards are designed to acknowledge excellence and innovation in the maritime sector across the region. Winners are chosen by a select panel of independent industry peers, taking into account criteria such as contribution to development of the region's maritime sector, innovation, commitment to safety, quality and environmental responsibilities, business enterprise and achievement, and training and development.

Steamship Mutual would like to extend congratulations to all those who received recognition at this year's ceremony and, in particular, to the following Members:

National Iranian Tanker Company - Tanker Operator Award. The award was accepted by Mr Mohammed Souri, chairman of the NITC and Steamship Mutual director.

Mr Mohammed Souri

The Shipping Corporation of India - Ship Owner/Operator Award. The award was accepted by Mr Kailash Gupta, director of SCI.

Mr Kailash Gupta

Orient Express Ship Management - Ship Manager Award. The award was accepted by Mr S. Ramakrishnan, chairman of the Transworld Group.

Mr S. Ramakrishnan

In addition, **Sir C.P. Srivastava**, who was the first chief executive of the Shipping Corporation of India, was honoured with the **Seatrade Lifetime Achievement Award.**

Sir C.P. Srivastava

For a full list of award winners go to:

www.seatrade-middleeast.com /awards/index.html

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Indian Iron Ore Alert - Excessive Moisture Content

"...Cargo with a moisture content that exceeds its transportable moisture limit is liable to liquefy."

There have been a number of recent incidents, including major casualties, resulting from the loading and carriage of iron ore fines from Indian ports.

Shippers are under an obligation to provide valid certificates stating the moisture content of the cargo in question, which content needs to be below the transportable moisture limit (TML). Both figures need to be identified at the time of shipment. Cargo with a moisture content that exceeds its transportable moisture limit is liable to liquefy. Should that occur, the stability of the vessel will be compromised and may result in severe consequences, including the potential loss of the vessel.

Masters loading these cargoes must satisfy themselves that the cargo is safe to carry. They need to ensure not only that the actual moisture content is below the TML, but also that the information in the moisture content certificate is valid: for example a moisture content analysis carried out at a different location, or at some time in the past may be of little value if the cargo has been sitting in the open immediately prior to shipment, unprotected from rain.

If the master reasonably believes that the moisture content of a cargo may be excessive, possibly based on visual observation during loading, he may take a series of samples and carry out a 'can test', as detailed in the BC Code. This is a rudimentary test. It will not indicate definitively whether a bulk cargo does contain excessive moisture; however, it may provide evidence allowing the master to require further testing to be carried out on the cargo in order to assess its transportability. It is recommended that the master undertake such tests where he believes that a cargo may be excessively moist and/or that liquefaction may occur. If in doubt he should seek assistance from Steamship Mutual's local correspondent.

It is recommended that Members loading these cargoes instruct their masters to proceed with extreme caution and to contact the Managers' London representatives if they have any concerns. Masters may face considerable local pressure to load and sail. Such pressure should be resisted where the cargo potentially presents a threat to the safety of the vessel and crew; Steamship Mutual's highly experienced, well established and widespread correspondent network in India will be able to assist in such circumstances.

The principles and potential problems involved in the carriage of this type of cargo are not necessarily limited to Indian iron ore. It is important that the correct regulations are complied with and precautions observed when loading similar cargoes anywhere in the World.

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Option for Continuation - When Does it Commence?

In a recent arbitration the tribunal had to consider whether the exercise of an option of a *"further 6 months in direct continuation"* had been validly made and from when the 6 month period ran.

The vessel was chartered for *"about 3 to 5 months in charterers' option"* with an option to charterers for a further 6 months in direct continuation at an increased rate of hire. The option clause provided: *"Charterers option further 6 (six) months in direct continuation to be declared after 3 months…"*

The vessel was delivered into charter and just under 3 months later charterers sought to exercise the option given to them. Owners contended that the 6 months ran from the end of the third month whilst charterers contended it commenced at the end of the fifth month. Owners refused to allow charterers to have the vessel on hire after a 9 month period (3 + 6 months). Charterers alleged owners were in repudiatory breach and accepted this by redelivering the vessel just short of the 9 month period.

Charterers claimed overpayment of hire for the period from the end of the third month until end of the fifth month and damages for their market losses from redelivery until the date they contended the vessel could have been redelivered.

The tribunal found for charterers; owners' interpretation of how the option would work was not how one would normally expect an option to work and clear words would have been needed to have the effect owners contended. The initial charter period gave charterers the right to use the vessel for a minimum period of 3 months to a maximum period of 5 months at the original rate of hire. The tribunal's view was that on exercising the option properly the charter period was extended from *"about 9 to about 11 months."*

Owners had submitted that the wording of the option clause itself supported their position as the word *"after"* made no commercial sense. Options were normally to be declared before a fixed date and not after. Owners argued that the clause had to be read as follows: *"Charterers option further 6 (six) months in direct continuation (to be declared) after 3 months…"*

The tribunal rejected owners' construction of the clause and posed the rhetorical question; why was it necessary to state that the exercise of an option had to be declared, since that was self evident, and yet not state what was important - by when the option had to be declared. The tribunal held that the word *"after"* was to be read as meaning "not later than" or "at the end of" and a precise date was not necessary.

The charterers' approach was correct as a matter of law and "of commercial common sense". Owners were in repudiatory breach, which charterers accepted and charterers were entitled to proven losses flowing from owners' breach, including the hire overpaid from the end of the third month.

London Arbitration 4/07 (2007) 715 LMLN 2

Article by Sian Morris
(sian.morris@simsl.com)

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Steamship Mutual Director President of the Indian National Shipowners' Association

We are pleased to note the election of Mr. S. Hajara, chairman & managing director, Shipping Corporation of India Ltd. as the new president of the Indian National Shipowners' Association ("INSA").

The Club has a strong and longstanding position in the Indian market and the Managers wish INSA well as they continue to promote the development of shipping interests in India.

Other former Steamship Mutual directors to have recently held this position include Mr Hajara's predecessor as chairman at SCI, Mr P.K. Srivastava, and the late Mr Sudhir Mulji of Great Eastern.

Steamship Mutual Director Receives Lloyd's List Award

At the Lloyd's List Greek Shipping Awards in early December, 2007, an independent panel chose Pericles Panagopulos for the prestigious Lifetime Achievement award. Through his companies Royal Cruise Line, Magna Marine, Superfast Ferries and Blue Star Maritime Mr Panagopulos has had a career of some 50 years in shipping, and has been at the forefront of innovation in the passenger sector. The relationship with Steamship Mutual first started with Royal Cruise Line in 1981. Mr Panagopulos has been a director of Steamship Mutual since 2000.

Image courtesy of Lloyd's List

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Deepwater Exploration

As the price of oil approaches US$100 per barrel, the demand for industrial levels of power increase and accessible oil reserves diminish, it is inevitable that the search for oil will extend to deeper areas of the ocean.

Exploration in deeper waters has developed into a serious commercial endeavour for major energy companies. As such, the technology required to find and produce oil economically from very deep water has been the subject of much research.

As vessels with capacities to drill at over 3,600m (12,000ft) become available the technology to produce from this depth needs to be developed to an economical level. The deepest water production platform is currently at 2,400m (7,800 ft) in the Gulf of Mexico but units at depths of over 1,000m are common in West Africa, India, Indonesia and Australia.

Predicted environmental data, critical to the safe design of offshore units, has been felt to be reliable enough to allow confidence in the robustness of platforms. However, as a result of climate change, environmental events greater than those originally predicted mean that platforms must be designed either to withstand increasing extremes of wind and waves or to be disconnectable systems which can be moved from harm's way.

In an article written for the Steamship Mutual website by Ian Sherrington and Jeremy Panes of Mwaves Limited this subject is discussed in greater detail and the current industry trend towards disconnectable systems is considered:

www.simsl.com/ Deepwater1207.html

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NOR Tendered at Outer Anchorage to Terminal - Valid?

The voyage charter provided that NOR could be tendered at the inner anchorage of the load port and only at outer anchorage if congestion prevented the vessel from proceeding to the inner anchorage. On arrival, although there was no congestion at the inner anchorage, the vessel anchored at the outer anchorage and tendered NOR to the terminal and to charterer's agents. The terminal orally accepted the NOR and owners contended that laytime commenced 12 hours later. Charterers contended that laytime only commenced when loading actually began.

Owners submitted that the clause in the charter requiring NOR to be tendered at inner anchorage gave way to a clause allowing tender of NOR *"whether in berth or not, whether in port or not…"* If this were not the case the terminal's acceptance of the NOR waived any defect and charterers were estopped from disputing the validity of the notice by reason of this acceptance. Charterers submitted that owners were not entitled to tender NOR at the outer anchorage absent any congestion at the inner anchorage and acceptance of the NOR by the terminal did not bind them as there was no unequivocal representation by charterers and no reliance by owners capable of giving rise to an estoppel.

The Charterparty was governed by English law and provided for disputes to be submitted to the exclusive jurisdiction of the English High Court.

Ocean Pride Maritime Limited Partnership v Qingdao Ocean Shipping Co [2007] EWHC 2796 (Comm)

The case and the Court's reasons for deciding in favour of owners are discussed in an article by Sian Morris **(sian.morris@simsl.com)** on the Steamship Mutual website:

www.simsl.com/OceanPride1207.html

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EU Ship-Source Pollution Legislation - Developments

The EU Directive on Ship-Source Pollution 2005/35/EC defines those ship-source discharges of oil and noxious liquid substances which Member States are to regard as offences when discharged in Community Waters. The EU Council Framework Decision (2005/667/JHA) was created to ensure the effectiveness of the Directive by imposing criminal penalties.

These instruments, which seek to criminalise accidental pollution, both within EC Member State's territorial waters and exclusive economic zones, and on the high seas, resulted in two cases in the European Court of Justice ("ECJ"). The first was started by INTERTANKO and others ("the Coalition") in the English High Court and questioned the legality of the Directive with regards to pre-existing international laws, i.e. MARPOL and UNCLOS 1982. See *"EU Directive on Ship-Source Pollution - Open to Challenge?"* article on the Steamship Mutual website at:

www.simsl.com/Articles/EU_CrimPoll1205.asp

The English High Court referred the question of the validity of Directive 2005/35/EC to the ECJ. On 20 November 2007, the Attorney General delivered an opinion upholding the validity of the Directive. However, the Attorney General did support the Coalition's argument that outside the territorial seas the EC has no power to legislate in matters that go beyond MARPOL. The Directive had sought to impose a "serious negligence" test of liability within both the territorial seas and EEZ of Member States. To do so outside the territorial seas would have been in conflict with international law – for example MARPOL. Therefore, in an attempt to reconcile EC and International law the Attorney General's opinion provides for the "serious negligence" test to be applied restrictively in the case of an incident outside a Member State's territorial seas and to be equivalent to the MARPOL test of recklessness, but more broadly in the event of an incident within a Member State's territorial seas. Although the ECJ does tend to follow the opinion of the Attorney General, it is not bound to do so. The ECJ's judgment is expected in early 2008.

The second action was brought by the European Commission to annul the EU Council Framework Decision. In November 2007 the ECJ held that (i) the instrument must be annulled and (ii) the Community is not competent to legislate as to the type and level of any penal sanctions for criminal offences committed under Community law. It remains for the Member States to impose their own penalties in the event of a breach of Community law.

Therefore, irrespective of whether the ECJ follows the Attorney General's opinion on the question of the validity of the Directive, the Directive must be reviewed to bring it in line with the ECJ's November ruling.

Both cases are discussed in more detail by Clarissa Cefai **(clarissa.cefai@simsl.com)** in an article written for the Steamship Mutual website at:

www.simsl.com/EUPollution1207.html

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Disputes Arising "Under" or "Out of" a Charter?

The House of Lords recently handed down its decision in the *"Fiona Trust"* litigation. The Court of Appeal decision was discussed in Sea Venture issue 8 and on the Steamship Mutual website at:

www.simsl.com/Fiona0407.html

The issue before the House of Lords was whether the defendant charterers should be granted a stay of court proceedings where the charters contained an arbitration clause and so should be referred to arbitration pursuant to s.9 Arbitration Act 1996. The claimant owner alleged that the charters were procured by bribery and had therefore been validly rescinded.

The House of Lords granted a stay for two reasons:

1. The language of the clause contained nothing to exclude disputes about the validity of the contract and therefore it should be assumed that, as rational businessmen, the parties intended all disputes (including whether the charter was procured by bribery) to be decided by the same tribunal.
2. The allegation that a party can rescind an agreement because it was induced by bribery (or for any other reason) does not undermine the validity of an arbitration clause as it must be treated as a distinct agreement pursuant to s.7 Arbitration Act. It can be void or voidable only on grounds which relate directly to the arbitration agreement, not the main contract.

These represent important principles of general application relating to the effect of arbitration clauses and should be borne in mind when entering into agreements containing such clauses.

Nick Barber of Stephenson Harwood discusses this decision in more detail in an article prepared for the Steamship Mutual website:

www.simsl.com/Fiona1207.html

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Crew Claims in the Philippines - "120 Days" Update

In *Crystal Shipping* the Philippine Supreme Court ruled that seafarers are subject to the Labour Code concept of permanent disability so that those who are unable to perform their customary work for more than 120 days are deemed totally and permanently disabled. This principle was reiterated in *Remigio* and in both cases the seafarers were awarded US$60,000 in permanent disability benefits. See Sea Venture issues 6 and 8 and the Steamship Mutual website at

www.simsl.com/Philippine 120Days0507.html

A Motion for Reconsideration has been filed before the Supreme Court, First Division, in the *Remigio* case. An answer is expected in early 2008. In the interim, the Supreme Court has handed down an interesting decision in *Maris C. Palisoc v Easy Ways Marine, 1997:* This case involves a crewmember suffering with left renal colic gallstone impairment. He was repatriated to the Philippines and subsequently went on to make a claim for total disability payment of US$25,000. This was on the basis of the assessment of the seafarer's personal physician who found him to be suffering from a disability grading of Grade 6. Palisoc claimed that he was entitled to US$25,000 in accordance with the terms of the (pre-2000) POEA.

The Labour Arbiter agreed with Palisoc's view. However, on appeal the National Labour Relations Court, First Division, set aside the award and absolved the owners from liability on the grounds that the company designated physician found the seafarer as fit to work. After taking his case to the Court of Appeals, and losing, Palisoc's claim was then appealed to the Supreme Court.

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On 11 September 2007 the Supreme Court delivered its verdict that permanent disability refers to the inability of a seaman to perform his job for more than 120 days and that loss of function of a bodily part is not necessary for a permanent disability status to be awarded. The Supreme Court also ruled that where a crewmember is deemed to be permanently disabled as a consequence of 120 days' absence from work the disability rating that follows should not automatically be a full Grade 1 rating but be determined by the company designated doctor. In this case the company doctor had ruled that the crewmember was fit for duty and so the shipowner was only liable to pay sick wages and medical expenses - not the Grade 6 benefit of US$25,000 claimed.

This is a very important and welcome ruling because it now means that a crewmember will not be automatically entitled to the Grade 1 payment of US$60,000 in the event that he is absent from work for 120 days or more. Where, for example, the lowest grade (Grade 14) is applied then the award will only amount to US$1,870 – a significant financial saving to shipowners.

It appears that the Supreme Court is now gradually rectifying the problems resulting from the original 120 day ruling in *Crystal Shipping*. Whilst the current position remains that 120 days absence means that a seaman is considered permanently disabled, at least in the case of the pre-2000 POEA the Court has recognised that this should not automatically justify a Grade 1 disability payment. The payment will be dependent upon the grading determined by the company doctor. This is a real improvement and a big step towards solving the 120 day problem.

Aspects of this decision are still being appealed and it is hoped that the Supreme Court may ultimately completely reverse the *Crystal Shipping* ruling.

Article by Paul Brewer
(paul.brewer@simsl.com)

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VLCC to VLOC Conversions

With the IMO requirement for single hull tankers to be phased out by 2010 approaching, the options available to the owner of these older vessels are limited. Previously it was thought that these vessels would either be converted to double hull, scrapped or converted into Floating Production Storage Offloading units.

However, in light of the high charter rates being achieved by bulk carriers many shipowners are now looking at the cheaper option (due to reduced shipyard time and less new steel required) of converting their VLCCs into Very Large Ore Carriers. Approximately 30 single hulled VLCCs are presently destined to be converted.

The conversion generally takes 3 to 6 months in the shipyard, this process adding another 10 to 14 years to the life of a vessel. This compares favourably with the 4 year wait for delivery of a new bulk carrier, even if yard capacity can be obtained.

The attraction for owners of sending their VLCC's for conversion is easily seen when the cost of converting a VLCC will generally be paid off in 1 to 2 years at present charter rates and with a bullish outlook for the dry bulk market. However, the impact on charter rates of the influx of over 550 capesize bulkcarriers, due to be delivered over the next five years, remains to be seen.

Generally, these vessels will be larger than the traditional capesize bulkcarrier (140-200,000 dwt) at 230-300,000 dwt and are intended for the Brazil and South Africa to China trade to satisfy China's prodigious requirements for iron ore.

The structural changes, statutory and class requirements involved in the conversion of VLCCs to VLOC are discussed in an article on the Steamship Mutual website by Captain Simon Rapley **(simon.rapley@simsl.com)** of the Club's Loss Prevention Department:

www.simsl.com/VLCCconversion0108.html

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U.S. - Recent Decisions on Punitive Damages

The United States Supreme Court recently agreed to decide whether punitive damages awarded to third parties as a result of the grounding of the "Exxon Valdez" in Alaskan waters in 1989 were excessive. The Supreme Court's consideration of the "Exxon Valdez" award is likely to be guided by a number of the Court's decisions over the past few years concerning the availability of punitive damages in certain types of civil actions; these have established certain still-evolving parameters for the lower U.S. federal and state courts. Though none of these recent Supreme Court decisions relate directly to maritime law, recent maritime decisions of the lower courts in the U.S. have held that punitive damages are still available in certain classes of maritime cases. These are claims which are not contractually based or where the subject matter of the claims has not been pre-empted by federal legislation excluding punitive damages altogether. Subject to these broad exceptions, punitive damage awards do still remain a possibility in cases arising under general maritime law, assuming of course that the requisite degree of willful and wanton conduct exists and other substantive and procedural due process requirements are met.

In an article written for the Steamship Mutual website Charles G. De Leo of Fowler White Burnett P.A. Miami considers these issues in greater detail:

www.simsl.com/USPunitive1207.html

Low Sulphur Fuels - Some Practical Implications

Low Sulphur Fuels have been a topic for considerable discussion since MARPOL Annex VI came into force in 2005. Recent developments such as the entry into effect of the North Sea Sulphur Emission Control Area (SECA) under MARPOL Annex VI and the reduction in the maximum sulphur limit for MGO used in European Union territory to 0.1% (under EU Marine Fuel Sulphur Directive 2005/33) serve to underline the considerable burden vessel operators face in ensuring the vessel is properly and cost-effectively bunkered.

The legislation, being driven by environmental concerns, makes limited allowance for present vessel design and engine configuration and, as such, poses a number of practical difficulties for ships' engineers. In an article addressing the likely impact of the existing and increasing limits on the sulphur content of marine fuels, Ian Green of Casebourne Leach, highlights the practical difficulties involved with the transition to low sulphur fuels.

The article can be found on the Steamship Mutual website at:

www.simsl.com/LowSulphur0108.html

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Pleural Plaques Not Actionable in Tort

In the long-awaited recent judgment in *Rothwell v Chemical & Insulating Co Ltd* the House of Lords unanimously upheld the majority decision of the Court of Appeal that pleural plaques do not constitute actionable damage under the English law of tort.

This landmark ruling has ended years of debate as to whether claimants should receive compensation under tort law for this asymptomatic condition, caused by exposure to asbestos during the course of their employment.

The Lords rejected an argument that the Appellants were entitled to damages on the basis that the presence of the plaques, combined with the risk of future injury and anxiety at the prospect of future injury constituted sufficient damage to give rise to actionable damage in the law of tort. This decision confirms the position that proof of damage is essential in a claim in negligence and that symptomless plaques are not compensatable damage.

Nevertheless, the House of Lords noted the possibility that claimants diagnosed with pleural plaques could in future seek compensation from former employers by claiming in contract for breach of contractual duty of care. A cause of action may exist in contract without proof of damage.

In an article which can be found on the Steamship Mutual website at:

www.simsl.com/PleuralPlaques1107.html

Rachel Butlin, Rebecca King and Holly Butwell of Holman Fenwick & Willan review the judgment in detail and consider the future of pleural plaques litigation.

Frustrating Delays Revisited

The circumstances in which a charterparty can be frustrated were considered in June 2007 by the Court of Appeal in the *"Sea Angel"*. Charterers, Tsavliris, were salvors involved in the "Tasman Spirit" casualty and had chartered the "Sea Angel" to lighter the "Tasman Spirit" for a period of up to 20 days.

Shortly before redelivery by Tsavliris the "Sea Angel" was detained by the Port Authority in Karachi.

In the event, Tsavliris were delayed from redelivering the vessel by some 3½ months during which time they did not pay hire. The vessel owner commenced proceedings in the English High Court claiming the outstanding hire. Tsavliris refused to pay the hire on the basis that the port authority had unlawfully detained the vessel; a frustrating event. The Court decided that the delay caused to the vessel had not frustrated the charter. This decision was discussed in Sea Venture issue 6 and on the website at:

www.simsl.com/Articles/SeaAngel0906.asp

Tsavliris appealed.

Generally, a frustrating event is something that significantly alters the nature of the parties' contractual obligations in a manner such that it would be unjust to hold them to the contract.

In upholding the decision of the High Court, Rix LJ, delivering the leading judgment, found that the charterparty had not been frustrated and the charterers remained liable for the payment of hire until the ship was redelivered. Even though the courts recognised and appreciated that the detention was unprecedented, the general risk of detention by port authorities was a foreseeable risk of the salvage industry. Further, given this was a time charter under which the charterer had assumed the risk of delay, it would be inconsistent with the interests of justice, on which the doctrine of frustration is based, to reverse this contractual risk.

The Court of Appeal decision is discussed in more detail by Zehra Mujtaba **(zehra.mujtaba@simsl.com)** in an article on the Steamship Mutual website at:

www.simsl.com/SeaAngel1207.html

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Risks in Carriage of Food Cargoes

Most foodstuffs are in a condition of prime quality at the time when they are harvested or produced. However, they are all inherently perishable and have a finite shelf-life. Therefore from that point onwards, during subsequent handling, processing, packaging, storage and transportation, they will inevitably deteriorate until they are no longer fit for purpose. Many people realise that this is the case with fish, fruit and vegetables, but they wrongly believe that grains are durable commodities. This is not the case and all grains will behave as perishables unless they are managed correctly.

The modern food industry depends on a plentiful all year round supply of ingredients for manufacturing processes or of the food itself for sale to consumers. Therefore, it is necessary to extend the natural life of foodstuffs so as to permit successful carriage and transportation to the end market.

Methods used to achieve this include:

- Control of temperature
- Control of moisture content
- Physical security from insects, rodents, fungi, water and contamination
- Modified atmosphere
- Preservation by salting, sugaring or use of other chemicals

However, all of these methods, and others, need to be employed with an adequate knowledge and understanding of food science and a necessary level of skill and expertise. Otherwise the very procedures intended to extend the usable life of the food commodity could, and do, result in reduction of quality, market rejection and subsequent financial loss. The very opposite of what was intended.

In an article written for the Steamship Mutual website David Walker of CWA International highlights the key issues necessary to ensure that the usable life of food cargoes is maintained or extended sufficiently for the purposes of shipping from producer to end user:

www.simsl.com/FoodRisks1207.html

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Mediation - Tried and Tested?

Mediation is an increasingly popular "alternative dispute resolution" method for resolving shipping disputes governed by English law. Parties to disputes (often already engaged in arbitration or court litigation) now frequently attempt to reach a settlement with the assistance of a mediator under an agreement to mediate.

The popularity of mediation is a consequence of a number of important advantages over other dispute resolution forums. These are generally known but include speed in comparison to either arbitration or court proceedings and can therefore produce substantial cost savings. Mediation is also confidential and nothing said in the mediation can generally be disclosed to an arbitrator or court. The parties themselves can be fully involved in the mediation with the assistance of their lawyers and the settlement reached can be much more commercially orientated than either a court order or arbitration award.

The presence of the mediator as a neutral channel for communication facilitates the discussions and encourages the parties to move towards an appropriate settlement, if possible.

In contrast, it is sometimes suggested that mediation can be used by the opposing party to gain early access to information for its own advantage and that mediation indicates a weakness on the part of the proposing party, undermining its position. These disadvantages are often more perceived than real, though there are some circumstances where mediation may not be appropriate or advantageous.

In an article written for the Steamship Mutual website Rebecca King of Holman Fenwick & Willan explores in more detail the points to consider before deciding whether to mediate. The article can be found at:

www.simsl.com/Mediation1207.html

Loss Prevention Posters

Many of the shipboard incidents that give rise to claims occur for reasons that are avoidable. In many instances human error is involved, the nature of which indicates that issues of basic training and seamanship may have been overlooked or forgotten. Consequently the ship's crew is a focal point for loss prevention and visual reminders of safe working practices and good seamanship have the potential to improve standards and thereby avoid unnecessary loss.

With this in mind, the Managers are producing a series of loss prevention posters for use onboard Members' vessels. There are currently two broad themes for these posters:

- **"Work Safely"** - which address safe working practices with a view to avoiding unnecessary personal injury.
- **"Stay Shipshape"** - which address good seamanship and ship husbandry to encourage seamanlike behaviour, and the identification and rectification of vessel deficiencies before they have the opportunity to give rise to claims.

The posters are based upon images of actual examples of poor practice and an illustration is used to convey the correct message.

The first in the series are now available and will be sent to Members shortly. The posters can also be downloaded from the Steamship Mutual website at:

http://www.simsl.com/loss-prevention-posters.html

Further posters in the series will be developed and issued at regular intervals.

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Small Claim, Serious Irregularity & Substantial Injustice

In July 2007 the Commercial Court allowed an appeal to set aside an arbitration award on the ground that there had been a failure to give each party a reasonable opportunity of putting its case, leading to a finding of serious irregularity under s.68(2)(a) Arbitration Act 1996. The award, appealed by buyers, related to a dispute arising out of an agreement for the sale and purchase of an ice classed tug.

In the arbitral proceedings the buyers had sought damages on the basis that the agreement had been induced by a representation as to the total power rating of the tug's engine. This representation was alleged to have occurred when, at the pre-purchase inspection, the sellers provided the buyers' agent with a certificate of class showing a higher total power rating than that of which the tug was, in fact, capable.

The buyers' case was that there had been a material representation by the sellers of the tug's power rating when they produced the class certificate. This cut no ice with the arbitral tribunal.

However, the arbitrators also concluded that, if there had been a representation, such representation would have induced the contract and the buyers' claim for damages would have succeeded.

The thrust of the buyers' appeal was that since the case had been presented to the arbitrators on the basis that the "representation" point was no longer an issue between the parties, the tribunal had found against it on a ground which was neither raised nor seriously disputed. The tribunal had invited submissions on other issues but not the one on which it had finally based its award. This argument found favour with the Commercial Court which allowed the appeal, Mrs Justice Gloster holding that the "representation" issue was one of the essential building blocks of the tribunal's decision.

The case is discussed in further detail in an article prepared for the Steamship Mutual website by Peter Gercans of MFB Solicitors:

www.simsl.com/OAONorthern1207.html

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Singapore - MOU on Oil Spill Response Rates

On 24 September 2007 the Maritime & Port Authority of Singapore (MPA) entered into a Memorandum of Understanding with the International Tanker Owners Pollution Federation (ITOPF) which established a schedule of rates covering oil spill response resources provided by the MPA and its supporting response agencies and resource owners.

It is hoped that the establishment of such a schedule of rates will expedite settlement of claims as between spill responders and the P&I Clubs in the event of an oil pollution incident in Singaporean waters, avoid long and costly disputes and thus increase the responders' commitment to engage in oil spill clean-up response efforts as promptly and efficiently as possible whilst ensuring clarity of costs.

The MOU is supported by both the International Group of P&I Clubs and the International Oil Pollution Compensation (IOPC) Fund; both of whom use ITOPF to provide technical advice in the event of a marine pollution incident.

The schedule covers oil spill response craft, portable equipment, boom, dispersant and personnel and took effect from 1 October 2007. It will be reviewed on a three-year cycle; the next such review taking place in January 2009.

This is the first such costs schedule established between ITOPF and a national government and other IOPC Fund Member States are being encouraged to enter into similar arrangements.

Article provided by Colin Williams
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Anti-Fouling Systems and Bunker Conventions

Recent months have seen the criteria necessary for the entry into force of two important IMO Conventions satisfied:

The International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001 ("the AFS Convention") will enter into force on 17 September 2008

Anti-fouling systems are defined by the AFS Convention as *"a coating, paint, surface treatment, surface, or device that is used on a ship to control or prevent attachment of unwanted organisms"*. When the AFS Convention is in force, ships will no longer be permitted to apply or re-apply organotin compounds which act as biocides in their anti-fouling systems; ships either shall not bear such compounds on their hulls or external parts or surface or, for ships already carrying such compounds on their hulls, a coating that forms a barrier to such compounds will have to be applied to prevent them leaching from the underlying non-compliant anti-fouling systems. The AFS Convention also establishes a mechanism to evaluate and assess other anti-fouling systems and prevent the potential future use of other harmful substances in these systems.

Further information on the AFS Convention can be found on the Steamship Mutual website at:

www.simsl.com/AntiFoul1107.html

International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 ("the Bunker Convention") will enter into force on 21 November 2008

Current international regimes covering oil spills do not include bunker oil spills from vessels other than tankers. The last significant gap in the international regime for compensating victims of oil spills will close when the Bunker Convention enters into force; Ships over 1,000 GT registered in a convention state will be required to carry on board a certificate certifying that the ship has insurance or other financial security to cover the liability of the registered owner for pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime. Owners, defined broadly, will be liable to pay compensation for pollution damage (including the costs of preventative measures) caused in the territorial waters and exclusive economic zone of a convention state.

Further details, including maximum compensation levels, are available on the website at:

www.simsl.com/Bunkers1207.html

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Steamship Mutual Website

What's New?

The "What's New?" area of the Steamship Mutual website makes it easier to find the most recently published items; this page is a new option in the main menu and provides easy access to different parts of the website where the latest items, such as articles and loss prevention bulletins, have been published.

http://www.simsl.com/whats-new.html

There is also an option to subscribe to an RSS feed which contains article headlines, links and descriptions and is updated as the website is updated. Readers can view the content of the RSS feeds using specialist news readers, either on desktop or online, which allow feeds to be viewed from multiple sources, including mobile phones and hand held devices. In this way readers can keep up to date with the latest developments even if they do not always have time to visit the website itself.

Website Articles

- U.S. - Stowaways from Dominican Republic and Haiti
  www.simsl.com/USStowaways0108.html
- Nigeria - Drug Enforcement Agency Fines
  www.simsl.com/NigeriaDrugFine0108.html
- California Shoreline Protection Regulations.
  www.simsl.com/CaliforniaShoreProtect0108.html
- USCG - Environmental Crimes Voluntary Disclosure Policy
  www.simsl.com/USVoluntaryDisc1107.html
- South Africa - Infested Wheat Cargoes from U.S.
  www.simsl.com/InfestedWheat1107.html
- Philippines - Navigational Warning for Dinagat Sound
  www.simsl.com/DinagatNavigation1107.html
- California - Court Rules on Sulphur Emission Regulations
  www.simsl.com/CaliforniaSOxRuling1007.html

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