Newsletter 16

SEA VENTURE

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Sea Venture is available in electronic format. If you would like to receive additional copies of this issue or future issues in electronic format only please send your name and email address to seaventure@simsl.com. Feedback and suggestions for future topics should also be sent to this address.

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INTRODUCTION

In this issue we welcome the Club's new Chairman, Mr Heinrich Schoeller, and also recognise the contribution of Mr Otto Fritzner who has been the Club's longest serving Chairman. Change at the helm has come at a time when Steamship's free reserves are at a record high, placing the Club in the strongest financial position in its history. The enormous contribution that the Chairmen and Club Directors make to the good governance and running of the Club deserves proper recognition and we are very grateful to the Board for their commitment to the Association's future.

Previous editions of Sea Venture have identified the wider industry role of the Clubs beyond the "normal" underwriting and claims services they provide. Topical examples since the last issue of Sea Venture include developments surrounding the Deepwater Horizon, sanctions now affecting trade with Iran and Iranian interests and problematic amendments to the Filipino Migrant Workers Act.

As to the Deepwater Horizon, the initial political response to this major oil spill was that Congress would require a complete overhaul of the U.S. Oil Pollution Act with fundamental changes to its structure and liability provisions. However, apart from requiring legislative reviews every three years the draft bills all now appear to leave existing limits for vessels unchanged, whilst increasing the limit for offshore facilities from US $75 million to US $350 million plus unlimited removal costs. Through the International Group ("IG") secretariat, the IG Pollution sub-committee, of which Colin Williams, Steamship's Head of Claims, is the chairman, has been involved in discussions with the U.S. authorities regarding these issues. An article at page 4 of this issue discusses the proposed repeal of sections of the Death on the High Seas Act and the Jones Act.

The actions taken by the U.S., U.K., and European Union in the last 12 months have had a substantial effect upon the Club's Iranian business and Rule changes have been made to ensure that the Club can comply with the sanctions regulations that each has introduced. This is currently an area of constant change, and because of Steamship Mutual's historic links with Iranian shipowners and the potential impact which sanctions have upon shipping as a whole, the Club has been in close contact with the U.K. authorities and, through the IG secretariat, with the regulators in Brussels and Washington. We have also been involved in the drafting of sanction related charterparty clauses. Up to date information on the sanctions is available on the Club website at: **www.simsl.com/Liabilities-and-Claims/IranSanctions.htm**

Both Gary Field, Head of Underwriting in the Club's Americas syndicate, and Richard Allen, a Claims Associate in that syndicate, represent the Club on the IG Personal Injury subcommittee and have been involved in attempts to mitigate the potentially far reaching effects of the amended Filipino Migrant Workers Act. These are discussed in an article on page 18.

Of course these are not the only live issues affecting shipping generally and the Club is involved in other current topics. These include U.S. Vessel Response plans, the Protocol to the HNS Convention and the new Chinese pollution regulations. Steamship Mutual regularly publishes circulars on the Club's website which enable Members to keep abreast of these and other industry developments: **www.simsl.com/Circulars/Club-Circulars.htm**

Together with Steamship Mutual's other publications and the Club's innovative loss prevention materials in particular – see page 16, our aim is to develop Sea Venture as a forum for providing useful and relevant information to the Members. Feed back on the publication and proposals for future topics is always welcome and should be addressed to me (malcolm.shelmerdine@simsl.com) or seaventure@simsl.com.

Malcolm Shelmerdine

Malcolm Shelmerdine

20 September 2010

Singapore Arrest – A Tale of Two Vessels

by Sarah McGuire

The first, the "Mahakam" was chartered by the plaintiffs on bareboat charter terms to the defendant charterers for a period of 60 months.

The defendants defaulted on hire payments and the vessel was withdrawn. London arbitration was commenced by the plaintiffs for a substantial sum of outstanding hire. The bareboat charter included a condition precedent that the performance and payment by the charterers would be guaranteed by a third party ("the Guarantor"). The charterers were a wholly owned subsidiary of the Guarantor.

The second, "Catur Samudra", was owned by the Guarantor. An arrest warrant was issued by the plaintiffs in the Singapore High Court for the outstanding hire with the claim stated to be under the guarantee.

The Guarantors applied in the Singapore High Court to set aside the warrant of arrest. The court considered various issues on the validity of the arrest, most notably the jurisdiction of the Admiralty Court and whether the claim was one arising out of an agreement relating to the hire of a ship and, if so, whether a vessel owned by a third party guarantor might be considered a "sister vessel" for the purposes of an arrest.

■ The decision has potentially wide ranging effects for those claimants seeking to arrest and has limited the efficacy of arrest as a tool for those creditors hoping to secure their claims. In an article written for the Steamship Mutual website Sarah McGuire (sarah.mcguire@simsl.com) considers in detail the decision in the *"Catur Samudra"*:
www.simsl.com/Samudra0910.html

Time for Change?

Wholesale Amendments to U.S. Maritime Law Proposed

by Richard Allen

On 1 July 2010, the United States House of Representatives passed bill HR 5503, also known as the *Securing Protection for the Injured from the Limitations on Liability (SPILL) Act* which proposes several amendments to the Jones Act and the Death on the High Seas Act (DOHSA).

The bill also proposes the repeal of virtually the entire framework of the longstanding Limitation of Liability Act.

If passed by the Senate, these proposals will lead to significant alterations to the scope of the Jones Act, the exposure faced by ship owners and the method of dealing with claims which may be made against them.

The bill proposes that:

- The scope of the Jones Act is broadened to allow non-U.S. workers employed by U.S. companies in the oil and gas industry and injured in the waters of a foreign state to claim pursuant to the Jones Act.
- Remedies available via DOHSA are extended to include non-pecuniary damages such as loss of care, comfort and companionship.
- The scope of potential DOHSA beneficiaries is broadened
- Remedies available via Jones Act "wrongful death" and "survival" actions are extended to include non-pecuniary damages such as loss of companionship, comfort and care.
- With a very limited exception, the repeal of the Limitation of Liability Act.

The United States Senate must pass the bill by simple majority before it is sent to the President to be signed into law.

■ Richard Allen (richard.allen@simsl.com) reviews the bill, the changes it proposes and the possible implications in an article on the Club's website at:
www.simsl.com/USSPILL0910.html

Piercing the Corporate Veil

– More Liberal U.S. Test Applied to Enforce English Judgment

by Sian Morris

With the demise of Electronic Fund Transfer attachments pursuant to Rule B applications, alternative means of enforcing debts need to be considered.

In the *Vitol v Capri Marine Limited,* charterers applied for a Rule B attachment of a vessel that was owned by a company managed by the same managers as the defendants. The vessel was said to be in the same beneficial ownership of the company against whom charterers had an unsatisfied judgment.

Following that attachment, owners sought an anti-suit injunction and the High Court had to consider:

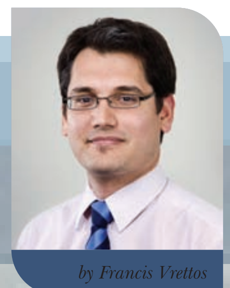
1. whether charterers could pursue enforcement in Maryland under local law rather than English law; and
2. whether charterers could rely on documents disclosed in the English proceedings for the purpose of enforcement proceedings in Maryland.

Finding in favour of the charterers, the High Court held that the law and jurisdiction clause in the charterparty did not restrain the charterers from commencing proceedings in Maryland to enforce the judgment and that charterers were permitted to use documents disclosed in the English proceedings for the purposes of the foreign enforcement proceedings.

■ The judgment is discussed in detail by Sian Morris (sian.morris@simsl.com) in a Steamship Mutual website article at: **www.simsl.com/Vitol0810.html**

Liability for Deck Carriage –

Exclusion and Indemnity Clauses and the Hague Rules



by Francis Vrettos

The recent decision in *Onego Shipping & Chartering BV v JSC Arcadia Shipping (the "Socol 3")* in which the Club was involved for charterers, offers an interesting review of an NYPE 1993 charter incorporating both a deck carriage and paramount clause.

The vessel was chartered for one time-charter trip. While loaded with sawn timber stowed both under and on deck she encountered adverse weather off Kattegat. Part of the deck cargo was lost overboard and in an effort to avoid further loss the vessel diverted to Halmstad to restow her cargo. The subsequent dispute between owners and charterers in relation to the additional time and costs involved, as well as potential cargo claims, was arbitrated in London. Owners sought to rely on clause 13b of the charterparty which, they argued, was an exclusion clause and provided an indemnity "*for any loss and/or damage and/or liability of whatsoever nature caused to the Vessel as a result of the carriage of deck cargo and which would not have arisen had deck cargo not been loaded.*"

The tribunal found that one of the causes of the loss was the vessel's instability as a consequence of loading a fourth tier and that because the stability of the ship was within the chief officer's knowledge, the owners were liable for the loss of cargo.

The tribunal dismissed the charterers' argument that the Hague-Visby Rules applied to a deck cargo when incorporated into a charter; they decided that clause 13b protected owners when the incident would not have happened but for the deck carriage and because the bills of lading were correctly claused to reflect the carriage on deck.

Charterers successfully appealed to the High Court. Mr Justice Hamblen concluded that clause 13b did not protect owners for loss caused by their own negligence and/or breach of the obligation of seaworthiness.

The decision and the interplay between the paramount clause and clause 13b are discussed in an article by Francis Vrettos (francis.vrettos@simsl.com) on the Steamship Mutual website at: **www.simsl.com/SOCOL30910.html**

Chilean Earthquake
– Wreck Removal

by Ian Freeman

On 27 February 2010 an earthquake measuring 8.8 on the Richter Scale struck the southern regions of Chile.

This was followed by two tsunamis which affected the Talcahuano Bay area in particular and its associated port and shipyard facilities.

These events led to a wreck removal operation covered by the Club.

The vessel, a five hold handysized bulk carrier, was in a traditional-style graving dry dock at the time. The passing of the tsunamis caused the dock and surrounding area to flood to a height of approximately 1 to 2 meters above the surrounding quay. The ship gained sufficient buoyancy to move bodily forward. As the waters receded to sea level the ship was left with its stern post in the dry dock but the bow aground on the top edge of the dry dock wall extending approximately 22 meters ashore. Two of the holds and the engine room were flooded, the latter with an oil and water mixture which presented a potential pollution threat. The hull and machinery underwriters declared the ship a constructive total loss and abandoned any propriety rights in the wreck.

In assisting the Member concerned, the Club was involved in all stages of the wreck removal operation from the initial survey through to the awarding of a contract and the final disposal of the ship itself. The incident served as a reminder that full ratification of the 2007 Wreck Removal Convention remains pending and that BIMCO is currently reviewing the Wreckhire99 contract form.

■ A more detailed commentary on the Club's role in this wreck removal operation and current legal developments in this field has been prepared by Ian Freeman (ian.freeman@simsl.com) in an article written for the Steamship Mutual website at: **www.simsl.com/ChileWreck0810.html**

To Mingle or not to Mingle
– the Risks of Co-Mingling/Blending Cargoes

by Darren Heppel

There have been several recent incidents where Club Members have been asked by their charterers to load separate parcels of petroleum products into the same cargo tanks and then discharge and deliver the combined cargoes to third party cargo receivers.

Such an operation presents a number of issues and risks to the owner depending on whether the charterer's request amounts to a true co-mingling or blending operation. These include: potential prejudice of Club cover, risk of claims from cargo interests for misrepresentation and/or the potential rejection of the cargo(es) on the grounds that the ship has delivered a product which is not in accordance with the contract of sale, potential breach of import/export regulations and the consequent risk of exposure to fines.

Other practical problems that can arise include weight discrepancies and the accuracy of sampling (see page 12 for discussion on sampling). It is therefore essential that such requests are considered with care and, if accepted, proper steps are taken to ensure that owners are protected, as far as possible, from the potential consequences.

■ The risks arising from such operations and the steps that may be taken to minimise the owner's exposure are discussed further in an article by Darren Heppel (darren.heppel@simsl.com) which appears on the Steamship Mutual website at: **www.simsl.com/Comingling0910.html**

Through Transport

– Another U.S. Supreme Court Admiralty Decision about a Train Wreck

Kawasaki Kisen Kaisha Ltd.v Regal-Beloit Corp.: In June 2010, the U.S. Supreme Court resolved a split between the U.S. Courts of Appeals as to whether a law regulating railroad carriage of goods, the Carmack Amendment ("CA"), applied to the inland portion of an international shipment under a through bill of lading and thereby "trumped" the forum selection clause in it.

The Ninth Circuit Court of Appeal held that it did. It reversed the trial court which had granted a motion to dismiss on the basis that "K" Lines' "Tokyo District Court" and Japanese law clause was reasonable and applicable to the inland rail carrier, Union Pacific, based on the Himalaya clause in the "K" Lines' through bills of lading. That court was, in turn, reversed by the Supreme Court, in a ruling that now is binding on all lower federal courts.

The Facts

Plaintiffs were cargo owners, and their subrogated underwriters ("cargo"), who arranged four different container shipments on "K" Line vessels from China to California and then on to Midwestern US destinations under the bills of lading.

In addition to the forum/choice of law clause and the Himalaya Clause, the bills of lading permitted "K" Line to "sub-contract on any terms whatsoever" for the completion of the journey. "K" Line sub-contracted for U.S. inland carriage of the containers with Union Pacific. The train carrying the containers derailed in Oklahoma, allegedly destroying the cargo.

The Carmack Amendment

Cargo claimed the protections of the CA which has specific venue provisions and imposes upon "receiving rail carrier[s]" liability for damage caused during the rail route under a bill of lading, regardless of which carrier caused the damage; the intention being to relieve cargo owners' burden of establishing the negligent carrier from among many. Cargo asserted that the Tokyo forum provision was pre-empted by the venue provisions in the CA.

The Majority Decision

The Supreme Court first examined its decision in *Norfolk Southern R. Co. v James N. Kirby, Pty, Ltd.*, 503 U.S. 14 (2004) (holding a through bill governed by federal admiralty law, notwithstanding contrary state law) and stated much of that decision applied, because *"Congress considered such international through bills and decided to permit parties to extend COGSA's terms to the inland domestic segment of the journey."* As Cargo and "K" Line had so agreed, and as the Tokyo forum was otherwise reasonable, its terms were binding.

The majority rejected Cargo's argument that the CA's venue provisions controlled, holding it inapplicable *"to a shipment originating overseas under a single through bill of lading,"* where there is no requirement for the receiving rail carrier to issue a CA-compliant bill of lading. *"The initial carrier... receives the property at the shipment's point of origin for overseas multimodal import transport, not for domestic rail transport."* The court distinguished the case where the cargo owners themselves contracted with rail carriers after conclusion of the ocean voyage. Further, the court held that applying CA's provisions would "undermine" the purposes of COGSA in facilitating international contracts for carriage by sea; "sophisticated cargo owners" agreed to the Himalaya Clause, contracted with "K" Lines for through transportation and forum-selection clauses are indispensable to international trade.

The Dissent

The Ninth Circuit had followed the Second Circuit *(Sompo Japan Ins. Co. v Union Pacific R. Co.*, 456 F.3d 54 (2d Cir. 2006)) so perhaps it is not entirely surprising that the newly elevated judge from that court, J. Sotomayor, wrote the dissent, in which Justices Ginsburg and Stevens joined. She considered the CA's language to have an *"expansive intent to provide the liability regime for rail carriage of property"* within the US so that it, and not the bill of lading, would govern. She concluded, quoting from *Kirby*: *"It is not... this Court's task to structure the international shipping industry."*

Conclusion

The decision providing COGSA protections under a Himalaya clause and for enforceability of reasonable forum selection clauses to U.S. inland rail carriers under through bills of lading (where the carriage of cargo starts overseas) is a singular vindication of COGSA and of its importance to *"the international shipping industry"*, including its sub-contractors.

Article by Jeremy Harwood of Blank Rome LLP, New York. The reference in the title is to the description used by the Court in *Kirby*.

■ A report on the *Kirby* decision can be found on the Steamship Mutual website at: **www.simsl.com/Kirby0805.asp**

Change at the Top

The Board meeting of 27 July 2010 in Dublin marked an important change at the helm of the Bermuda Club; Mr Heinrich Schoeller was elected as new Club chairman, taking over from Mr Otto Fritzner whose 9 years in the position made him the longest-serving Club chairman to date.

Mr Fritzner began his career in 1967 at Det Norske Veritas after serving in the Royal Norwegian Navy. He then worked for L.Gill-Johanessen & Co and Kristian Gerhard Jebsen, holding several management positions including the Vice Presidency of Gearbulk. From 1988 to 1993 he was a director at Columbia Ship Management and so has worked with Mr Schoeller. From 1993 he worked at Stolt-Nielsen Transportation Group, a subsidiary of Stolt-Nielsen S.A., where he fulfilled various vice presidential roles. He later became Managing Director and ultimately CEO. He retired in January 2008. In addition to his business career Mr Fritzner has served on committees of many industry organisations including INTERTANKO, ITOPF, Germanischer Lloyd, Det Norske Veritas and the Norwegian Shipowners Association.

Otto Fritzner

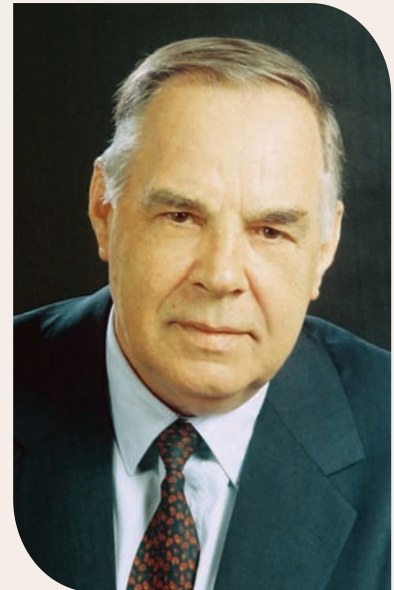
Mr Fritzner joined the Club Board in 1994 and was elected chairman in 2001. His chairmanship has seen an increase in entered tonnage to 85 million tons (a Club record) accompanied by an increase in quality of the entered fleet. He remains a director of the Bermuda Club Board.

Mr Fritzner said of his successor: *"I know that when I hand over to Heinrich it will be to an able pair of hands. And I should know – he used to be my boss"*.

Like Mr Fritzner, Mr Schoeller has impressive career experience which equips him well for the role of Club chairman. His career began in 1959 in sea service with Christian F. Ahrenkiel. In 1970 he obtained his Master's license and also joined the company's head office as superintendent. In 1972 he founded Hanseatic Shipmanagement and was their first Managing Director until the end of 1976. He was technical director of Christian F. Ahrenkiel from 1977 to 1981 and in 1978 Schoeller Holdings Limited, parent company to Columbia Shipmanagement Limited, was incorporated with Mr Schoeller as Chairman.

It has been more than 10 years since Columbia's first entry with Steamship Mutual. Today the Club provides cover for a substantial number of Columbia vessels representing the majority of the company's fleet. Mr Schoeller has been a Board Member since 2004.

Commenting on his recent appointment as chairman Mr Schoeller said: *"I am honoured to be elected as Chairman of Steamship Mutual. On behalf of my fellow Directors I would like to thank Otto Fritzner for his great service to the Club. During his Chairmanship the Club has grown financially stronger and I take over with the Club in an excellent position. I look forward to playing my part in helping the Club progress further over the coming years."*



Heinrich Schoeller

"Cape Taft" featured on the cover of this issue is entered with Steamship Mutual and managed by Columbia Shipmanagement (Deutschland) GmbH.

■ Article by Naomi Cohen
(naomi.cohen@simsl.com)

Piracy – an Off-Hire Event?

The recent decision of the English Commercial Court in the *"Saldanha"* is a landmark ruling. The court considered for the first time and in detail whether a vessel which was seized by pirates in the Gulf of Aden will remain "on hire" under the standard NYPE wording.

by Diana Sailor

The vessel "Saldanha" was seized by pirates whilst transiting the Gulf of Aden in February 2009. She resumed her voyage from an equidistant position on 2 May 2009. The vessel's daily hire rate was US$52,500 and the accrued charter hire for the duration of the detention was in the region of US$3,622,500. The vessel was chartered on NYPE terms. In addition to the standard off-hire clause, the charterparty incorporated a number of individually tailored clauses including a "seizure and detention" clause.

The court held that the vessel remained on hire throughout the period of detention as seizure by pirates does not fall within the scope of the causes enumerated in the off-hire clause. The court further held that the "seizure and detention" clause did not apply as it made no express reference to "piracy".

■ In an article written for the Steamship Mutual website Diana Sailor (diana.sailor@simsl.com) reviews the decision, analyses the NYPE off-hire clause, considers the extent to which the parties can modify their agreement by use and incorporation of express contractual provisions, and what to look out for when negotiating on another party's standard terms: **www.simsl.com/Saldanha0910.html**

Alleged Oral Variation of Charter and Misdescription

The decision in the *"Hilal 1"* concerned an application by owners to the High Court for an extension of time to challenge two arbitration awards. The underlying disputes arose from owners' refusal to load cargoes of hot moulded briquettes of reduced iron and direct reduced iron.

by Tim Guyer

The vessel has been chartered for consecutive voyages under separate time charters that excluded both cargoes. Charterers alleged that there had been an oral agreement varying the charters and allowing the carriage of these cargoes.

Owners denied that the charters had been varied and, further, that even if there had been an oral variation, they were not in breach because, in any event, the vessel's air draught exceeded the draught restrictions at the load ports and thus prevented her from loading. Responding to the latter point charterers alleged that the vessel's moulded depth, which is relevant to the calculation of air draught, was misdescribed in the charters.

■ The issues and reason why an extension of time to appeal was refused are discussed in an article by Tim Guyer (tim.guyer@simsl.com) on the Steamship Mutual website at: **www.simsl.com/Hilal0910.html**

Can a Master's Behaviour Disentitle Carriers from Relying on Hague-Visby Defence?

On 3 May 2001 the *"Tasman Pioneer"* grounded in Japanese waters on a dark and stormy night and much cargo was lost. Controversy arose from the post-grounding conduct of the master, which was variously described in the judgments of the New Zealand courts as "selfish", "outrageous" and "reprehensible" and said to have caused the loss of deck cargo.

Cargo interests asserted that such conduct disentitled the carrier from reliance upon the defence under Article 4 rule 2(a) Hague-Visby Rules namely:

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from

   (a) Act, neglect or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship.

The Supreme Court of New Zealand has found in favour of the carrier and in doing so confirmed that the ordinary meaning of the words in the exception apply, save that carriers are to be denied the defence in the event of barratrous conduct.

Following the grounding, two of the vessel's holds were open to the sea. At first instance in the High Court cargo interests alleged that the vessel was unseaworthy. It was said seawater flowed from the holds to other tanks within the vessel (independent of the grounding damage) so as to cause her to go down by the head quicker than she should otherwise have done. That allegation failed.

The remaining issue was whether the defence under Art 4.2(a) was available to the carrier when the master, having grounded the vessel while steaming through a narrow channel at 15 knots, failed properly to assess the rapid ingress of water into two holds of the vessel, notify the coastguard or owners, slow down, or seek to beach the vessel. Instead he steamed on for a couple of hours to a point where he would have rejoined an alternative route, falsified charts and had the crew lie to conceal what had happened to suggest the ship had struck an unidentified object in open water.

Cargo interests asserted that the misconduct by the master was sufficient to deny application of the Art 4.2(a) defence. Specifically, it was said that his conduct *"intended to allow him to misrepresent and lie about the true circumstances of the casualty so as to absolve himself from blame"*. The carrier admitted that intention.

The High Court found that the Article 4 rule 2(a) defence was not available because the master's conduct after the grounding was not "bona fide" in the navigation or in the management of the ship. That was the position advocated by cargo interests in reliance upon the House of Lords in the *"Hill Harmony"*.

The finding of seaworthiness of the vessel was not appealed. On appeal, the High Court's characterisation of the Art 4.2(a) defence was rejected but, by majority, the Court of Appeal found that the carrier should be denied the defence on other grounds. In substance, because the master's conduct was "outrageous" it was not in the navigation or in the management of the ship. The Court said Art 4.2(a) was designed to change the prior common law position and that the result was justified by a purposive approach to interpretation of the Rules.

The Supreme Court rejected the approach of both the High Court and the Court of Appeal, identifying in summary that "*the text of Art 4.2(a), the scheme of the Rules, the common law authorities, the travaux, cases on the Hague Rules, cognate definitions and the views of eminent textbook writers all support the exemption of owners from liability for the acts or omissions of masters and crew in the navigation and management of the ship unless their actions amount to barratry*".

As to the scheme of the Rules the Court observed:

"Carriers are responsible for loss or damage caused by matters within their direct control (sometimes called "commercial fault"), such as the seaworthiness and manning of the ship at the commencement of the voyage. They are not however responsible for loss or damage due to other causes, including the acts or omissions of the master and crew during the voyage ("nautical fault"). This allocation of risk is confirmed by art 3.2 being made subject to art 4 and by the inapplicability of the art 4.2(b) and (q) exemptions in the event of "actual fault or privity" of the carrier. The allocation of responsibility between the carrier and the ship on the one hand and the cargo interests on the other promotes certainty and provides a clear basis on which the parties can make their insurance arrangements and their insurers can set premiums."

The carrier argued that motive of the master is irrelevant in determining whether his

conduct is an act, neglect or default in the navigation or in the management of the ship under Art 4.2(a). However, the exception is not available to the carrier if the master's conduct is barratrous. That is because an exception for barratry had formerly appeared in bills of lading and was proposed by ship owners at the Hague conference in 1921, but rejected as part of the negotiated compromise. What amounts to barratry for the purpose of the Rules is apparent from a review of those parts of the Rules themselves which are directed to damage with actual or imputed intent, which is the essence of barratry, ie whether the master intended or was reckless with knowledge that damage to cargo would probably result. That also reflected the test applied to conduct barring limitation under the *Convention on Limitation of Liability for Maritime Claims 1976*.

The Supreme Court agreed. It found that English decisions addressing the construction of the Rules and decisions of superior courts in Germany and the Netherlands directed specifically to the issue, were consistent with that approach.

As to the master's alleged post-grounding conduct, the carrier said it fell well short of an allegation the master intended or was reckless with knowledge that the damage to the deck cargo would probably result.

The Supreme Court found that the pleading point was not merely a technical one. The carrier did not call the master to give evidence at the trial and it was entitled to adopt that course because it had admitted the master's intention alleged and it was not alleged the master had been actuated by any intent to damage the ship or the cargo. The cargo claims therefore failed.

The Art 4.2(a) defence has long been viewed as controversial but it remains to be construed by reference to the ordinary meaning of the words in the exception, the scheme of the Rules and in light of the negotiations at the Hague in 1921. Of course the Rotterdam Rules do not include the exception, but while the Hague-Visby Rules continue to apply, this decision provides a useful structural analysis of them and the application of this exception in particular.

Tasman Orient Line CV is entered with the Club and were represented by DLA Phillips Fox.

■ Further details and case references are available in the online version of this article on the Steamship Mutual website at: **www.simsl.com/TasmanPioneer0410.htm**

Article by Neil Beadle, Special Counsel at DLA Phillips Fox, Auckland.

Steamship Board Members Honoured at Seatrade Awards 2010

The 22nd Seatrade Awards Dinner took place on Monday 24 May at London's Guildhall in the presence of IMO Secretary-General, Efthimios Mitropoulos, Chairman of the judges of the Seatrade Awards.

Capt. Wei Jia-fu, President & CEO COSCO Group, received the Seatrade Lifetime Achievement Award from Admiral Sir Mark Stanhope,
Xing Liangzhong, Chairman, Dalian Port Corporation (award sponsors)
and IMO Secretary-General, Efthimios Mitropoulos

Over 300 members of the maritime community travelled to London to celebrate the outstanding contributions made over the last year for safe, efficient and environmentally friendly shipping. Guest of Honour, Admiral Sir Mark Stanhope KCB OBE ADC, First Sea Lord and Chief of Naval Staff, who presented the awards, said:

"These annual Awards bring professionals and specialists from across the global maritime sector together in a common cause. It is an opportunity to look across the industry as a whole in recognising and celebrating innovation and excellence".

The Seatrade Awards programme rewards new ideas and concepts that have proved themselves in early operational use, recognising the industry's efforts in improving maritime standards and awarding those at the forefront of new thinking.

Mohammad Souri, Chairman & Managing Director, NITC was presented with the **Seatrade Personality Award for 2010**. As a highly respected and experienced member of the global shipping industry he has been the Chairman and Managing Director of NITC for over 25 years guiding his company through a privatisation process and up the ranks to its current position as one of the world's four largest companies in its sector.

Capt. Wei Jia-fu, President & CEO COSCO Group, was presented with the **Seatrade Lifetime Achievement Award** in recognition of his outstanding contributions to the international shipping industry as an eloquent articulator of the Asian voice in world shipping. Capt. Wei took the company into the Fortune 500 and transformed COSCO into a diversified shipping group which, even in the most serious recession year of 2009, still achieved a profit.

Mohammad Souri received the Seatrade Personality Award from Admiral Sir Mark Stanhope and IMO Secretary-General, Efthimios Mitropoulos.

Maintenance and Cure – Punitive Damages To be Capped?

by Paul Brewer

Following the decision in *Townsend v Atlantic Sounding* (discussed in Sea Venture issue 14) there has now been another award of punitive damages against a shipowner for failure to provide adequate maintenance and cure to a crewmember.

In *Clausen v Icicle Seafoods (9th Circuit)* the jury awarded US$465,525 in compensatory damages and US$1,300,000 in punitive. Icicle appealed the ruling arguing that the case of *Exxon Shipping v Baker* had established a universal cap of a 1:1 ratio between punitive and compensatory damages in all maritime cases and that the award here exceeded this ratio.

The Court in *Clausen* disagreed that a 1:1 ratio cap need be applied to this case. The U.S. Supreme Court in *Townsend* had not applied this cap (as it had in the Exxon case) and had left that issue open.

When considering the reasonableness of a punitive damages award a court will look at the defendant's behaviour. In *Clausen* the Supreme Court ruled that the defendant's conduct was at the "zenith of reprehensibility" and that their failure to provide maintenance and cure was "intentional", "repeated", "malicious" and "motivated by profit".

When considering the difference between compensatory and punitive awards the court will take into account any substantial disparity between the actual harm suffered and the potential harm which might have been caused. Whilst a 1:1 ratio might be considered, there are many other factors which will influence a court on the issue of the reasonableness of an award.

■ Paul Brewer (paul.brewer@simsl.com) discusses these issues further in an article written for the Steamship Mutual website at: **www.simsl.com/PunitiveIcicle0610.html**

Sampling

– A Guide to Reducing Contamination Claims

A significant source of claim associated with the transport of liquid cargo is contamination.

This can occur on loading, during passage and/or on discharge but the tendency is to lay the blame on the vessel; suppliers and receivers of cargoes (whatever the cargo may be) do not immediately take action against their trading partners. The easiest target is the carrier.

Therefore, it now seems appropriate for the industry, and in particular the carrier, to set in place certain procedures to improve the quality of sampling the cargoes being loaded, transported and delivered so as to reduce the level of claims currently being presented. Appropriate sampling during loading can reduce the level of cargo contamination and therefore the potential claim against the vessel.

■ Douglas Southerland of Associated Petroleum Consultants Ltd provides a guide to appropriate sampling which should reduce the carrier's exposure to contamination claims. His article can be found on the Steamship Mutual website at: **www.simsl.com/CargoSampling0810.html**

Convention Update

MARPOL Annex VI Enters Into Force

The revised Annex VI *(Regulations for the Prevention of Air Pollution from Ships)* of MARPOL entered into force globally on 1 July 2010, together with important reductions in sulphur oxide (SOx) emissions in specific areas. The revised Annex VI allows for Emission Control Areas (ECAs) to be designated for SOx and particulate matter, or NOx, or all three types of emissions from ships. The limits applicable in sulphur ECAs were reduced to 1% from 1 July 2010 (previously 1.5%) to be further reduced to 0.1% from 1 January 2015. This means that ships trading in the current ECAs now need to burn fuel of lower sulphur content or use an alternative method to reduce emissions.

The revised Annex currently lists two ECAs for the control of SOx and particulate matter: the Baltic Sea area and the North Sea, which includes the English Channel. A new North American ECA for SOx, nitrogen oxide (NOx) and particulate matter was adopted by IMO in March 2010. The regulations to implement this ECA are expected to enter into force in August 2011, with the ECA becoming effective from August 2012.

■ Further details can be found on the Steamship Mutual website at: **www.simsl.com/MARPOLVIinForce0710.html**

Amendments to STCW Convention & Code Adopted

Major revisions to the STCW Convention and associated Code were adopted at a conference in Manila at the end of June 2010. The "Manila amendments" are set to enter into force on 1 January 2012. New provisions on the issue of *"fitness for duty – hours of rest"* were also agreed in order to provide watchkeeping officers with sufficient rest periods.

■ The amendments and new provisions are reported on the Club website at: **www.simsl.com/STCWAmends0710.html**

Passenger Ship Safety - New SOLAS Regulations in Force

A comprehensive package of amendments to the international regulations affecting new passenger ships entered into force on 1 July 2010. Increased emphasis is placed on reducing the chance of accidents occurring and on improved survivability, embracing the concept of the ship as "its own best lifeboat". The amendments came about as the result of a comprehensive review of passenger ship safety initiated in 2000 by IMO to assess whether existing regulations were adequate to meet future challenges, in particular, to address issues related to the increased size of passenger ships now being built.

■ The amendments to these SOLAS regulations are discussed further on the website at: **www.simsl.com/SOLASRegs0710.html**

Protocol to HNS Convention Adopted

The 2010 Protocol to the HNS Convention addresses practical problems that have prevented many states from ratifying the original Convention. Despite being adopted in 1996 the Convention has only 14 ratifications to date and is some way from meeting the conditions for its entry into force.

Under the 2010 Protocol, if damage is caused by bulk HNS, compensation would first be sought from the shipowner, up to a maximum limit of 100 million Special Drawing Rights (SDR) (US$150 million approx.). Where damage is caused by packaged HNS, or by both bulk HNS and packaged HNS, the maximum liability for the shipowner is 115 million SDR (US$172.5 million approx.) Once this limit is reached, compensation would be paid from the second tier, the HNS Fund, up to a maximum of 250 million SDR (US$375 million approx.), which includes compensation paid under the first tier.

■ The entry into force criteria and further information can be found at: **www.simsl.com/HNSProtocol0710.html**

Article by Naomi Cohen
(naomi.cohen@simsl.com)

by Naomi Cohen

Contractual Negotiations – Caution Required

The U.K. Supreme Court decision in *RTS Flexible Systems Ltd v Molkerei Alois Müller Gmbh*, although not related to maritime matters in any way, serves as a cautionary reminder of the risks inherent in performing contract obligations before a final contract is agreed and in place.

The facts are complicated but, in brief, Müller (a diary product company) began negotiations with RTS for the supply and installation of packaging machinery at their factory. Muller gave a Letter of Intent and upon receipt RTS began work notwithstanding that formal contract terms were still being negotiated. The Letter of Intent expired but work continued. The final draft agreement contained a clause that the contract was not to be effective until signed. Signature never took place and disputes subsequently arose requiring a determination as to the existence of a contract and the terms thereof.

■ The decision is discussed in more detail by Sian Morris (sian.morris@simsl.com) in an article on the Steamship Mutual website at: **www.simsl.com/Flexible0810.html**

Remoteness of Damage – Has *the "Achilleas"* Rewritten the Law?

The nature and scope of the ratio of the House of Lords' decision in *the "Achilleas"* has been a matter of controversy.

Some claim the case imposes a broader "assumption of responsibility" requirement in addition to, and separate from, the remoteness rule. The recent judgment in *Sylvia Shipping Co Ltd v Progress Bulk Carriers Limited (the "Sylvia")* holds that there is no such new test.

The issue in *the "Sylvia"* was whether a similar limit applied where the owner's breach of charter caused his time charterer to lose a sub-fixture. The tribunal found that the owners had been in breach of their due diligence and maintenance obligations, as result of which the "Sylvia" had been detained by port-state control. This, in turn, led to the charterers missing the cancelling date on their sub-fixture, which the sub-charterers then cancelled. The substitute employment which the charterers were able to find post-cancellation was less profitable than the cancelled fixture. Charterers claimed the difference from owners. The tribunal found in the charterers' favour.

Owners appealed. Relying on *the "Achilleas"* they said that the charterer's only recoverable loss was the difference between the charter and market rates for the period of the detention. The profits lost on the cancelled sub-fixture were too remote to be recoverable. In order to decide the appeal, Mr Justice Hamblen considered *the "Achilleas"* and the effect of the House of Lords' decision.

■ The decision is discussed in more detail by David Semark and Chirag Karia of Quadrant Chambers in an article on the Steamship Mutual website at: **www.simsl.com/Sylvia0810.html**

Piracy – Is Cargo Lost?

The continuing acts of piracy, particularly off the coast of East Africa, have led to discussions on a number of related issues many of which can be found in the piracy section of the Club website: **www.simsl.com/piracy.htm**

Earlier this year, the English High Court gave a ruling in relation to a cargo claim resulting from a piracy incident. In August 2008 the "Bunga Melati Dua", along with its cargo and crew, was hijacked by Somali pirates. Cargo owners claimed for a total loss of the cargo under their cargo insurance policy. The English High Court was asked to decide whether the cargo was an actual or constructive total loss.

■ The court's decision focused on various issues of direct relevance to many in the shipping community but, in particular, abandonment. Neil Gibbons (neil.gibbons@simsl.com) discusses the decision in an article on the Steamship Mutual website at: **www.simsl.com/Masefield0910.html**

See also page 9 of this issue of Sea Venture for *Piracy - an Off-Hire Event?*

by Neil Gibbons

U.S. Coast Guard Investigations – "Parties-in-Interest"

As a branch of the United States Armed Forces, the United States Coast Guard (USCG) is known for being a multi-mission service incorporating military and maritime forces. Its duties extend to the investigation of maritime casualties which occur within U.S. waters.

by Aneeka Jayawardena

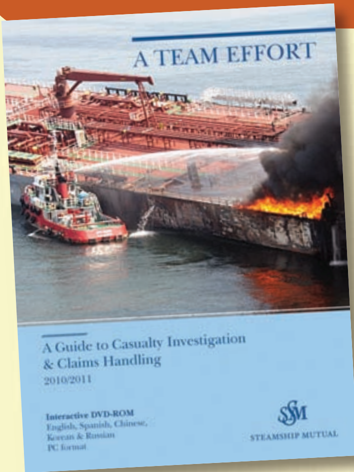
With this in mind, the possibility always exists that information obtained by the USCG through their investigation might be made available for wider consumption and used for adversarial purposes in a claim.

In January 2010, the USCG issued CG-545 Policy Letter 3-10 ("the Policy") which was intended to provide clearer guidelines as to the rights of "Parties-in-Interest" during USCG investigations. The question of who is a "Party-in-Interest" is addressed by the U.S. Federal Code. However, the Policy appears to give "Parties-in-Interest" greater investigative powers than they previously held. It specifically addresses the rights of when and how a party may participate in USCG investigations and the materials they are entitled to access and review.

Prior to implementation of the Policy requests to participate in an investigation often went unheard and, in some instances, were even denied. "Parties-in-Interest" may now be granted leave to participate in the interviews of key personnel and other aspects of the investigation.

■ Whether this development is to be welcomed is considered in a Steamship Mutual website article by Aneeka Jayawardena (aneeka.jayawardena@simsl.com) at: **www.simsl.com/USCGInvestigations0910.html**

Loss Prevention Update



A Team Effort - 2010/2011

Effective claims handling is crucial to minimizing a Member's financial exposure. It requires co-ordinated effort from all concerned: Club, Member, correspondents, experts, and lawyers. It is a team effort. The latest edition of the *Club's Guide to Casualty Investigation and Claims Handling – A Team Effort* has just been released. It contains a completely new video section that was filmed on location in Hamburg, Monaco and London and also incorporates Korean and Russian versions in addition to the English, Chinese and Spanish language options that were previously available. As usual, the current Club Rules, List of Correspondents and details of Club contacts are incorporated, together with an expanded reference section.

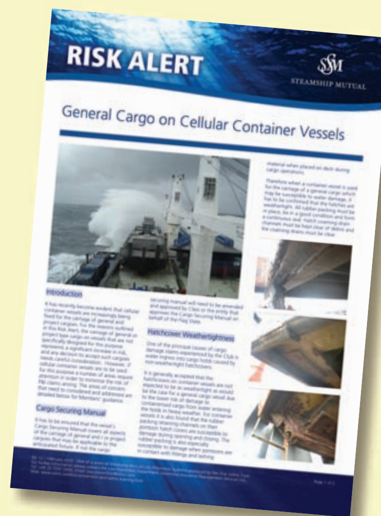
■ A trailer for the DVD, which is supplied free of charge to all Members, is available to view on the Club website at: **www.simsl.com/TeamEffort2010.html**

Risk Alerts

The Club continues to issue *Risk Alerts* to raise awareness about various important loss prevention issues. The latest *Risk Alerts* address the following subjects:

- Paris MOU New Inspection Regime
- Ship to Ship Transfer Operations
- The Dangers of Confined Spaces
- Personal Injury in and around Cargo Holds
- ECDIS Implementation Requirements
- Gangway and Accommodation Ladder Inspection and Maintenance
- General Cargo on Cellular Container Vessels

Risk Alerts can be found at: **www.simsl.com/RiskAlert.htm**


RISK ALERT

SSM STEAMSHIP MUTUAL

General Cargo on Cellular Container Vessels

Posters – Engine Room Safety

This series of loss prevention posters targets conditions in machinery spaces. The posters underline proper practice in relation to safety guards and personal protective equipment for use with grinding machines, the securing of floor plates, the stowage and securing of chemicals and the cleanliness of machinery, associated pipes and lagging.

■ Loss Prevention posters can be viewed and downloaded via the Club website at: **www.simsl.com/Loss-prevention-posters.html**

■ The Loss Prevention homepage is at: **www.simsl.com/Loss-prevention-and-safety-training.html**

Withdrawal – Remuneration for Continuing Service?

The decision of the English High Court in the *"Kos"* was discussed in issue 15 of Sea Venture.

by Jamie Taylor

In the High Court owners were remunerated for charterers' use of the vessel following its withdrawal from their service, as well as for the costs of bunkers consumed in the period between notice of withdrawal and the completion of discharge of the part-loaded cargo. The owner's claim succeeded because they had a duty to care for the cargo in their capacity as bailees while the cargo remained on board. Charterers' appeal has now been heard.

■ The reasons why the Court of Appeal disallowed the remuneration but did agree that owners were entitled to the cost of bunkers consumed during discharge of the cargo are discussed in greater detail by Jamie Taylor (jamie.taylor@simsl.com) in an article on the Steamship Mutual website at: **www.simsl.com/Kos0910.html**

Termination of Consecutive Voyage Charter – Measure of Damages

by Silvia Mahringer

In the *Zodiac v Fortescue Metals (the "Kildare")* the High Court had to decide if the vessel owner was entitled to claim demurrage and damages from charterers flowing from the termination of a consecutive voyage charterparty.

Charterers were unable to supply cargoes for loading as a consequence of the cancellation of freight agreements and when a cargo was not available for loading the vessel went on demurrage. Owners treated charterers' conduct and attempts to suspend or delay performance as repudiatory and terminated the charter. Charterers accepted owners' termination of the charterparty as itself repudiatory.

Which party was correct turned on questions of fact. Owners alleged that correspondence between the parties evidenced an intention on the part of charterers to terminate the charter, not merely that they were seeking to exercise a contractual right to suspend or delay performance. If owners were correct, the issues were the correct measure of damages to apply and whether or not there was an available market against which to assess owners' losses.

■ Silvia Mahringer (silvia.mahringer@simsl.com) discusses the reason why the court preferred owners' evidence and the basis on which damages were assessed in an article written for the Steamship Mutual website at: **www.simsl.com/Zodiac0810.html**

■ The relevance of an available market to the measure of damages was also discussed in "The Elbrus" in issue 15 of Sea Venture and on the website at: **www.simsl.com/Elbrus0210.html**

Payment for Bunkers – Are Owners Responsible?

The High Court in London has recently considered what rights of recovery (if any) might be afforded to an unpaid supplier of bunkers to a time charterer where that supplier makes a claim against the owner of a vessel *(Angara Maritime Ltd v Oceanconnect UK).*

by Nooshin Moafi

In this case, the direct action against owners for non-payment arose out of the liquidation of the time charterers.

Giving judgment, Judge Mackie Q.C. concluded that the bunker supplier's claim was dependant on the application of Section 25(1) Sale of Goods Act 1979, namely:

1. Did the time charterers obtain possession of the goods with the consent of the seller?
2. Was there delivery of the bunkers by the charterers to the owners?
3. Did the owners receive the bunkers in good faith without notice of any lien or right retained by the bunker supplier?
4. Is it the case that charterers were only ever mercantile agents in possession of the bunkers? If yes, then this would not have enabled owners to take good title to the bunkers.

■ Nooshin Moafi (nooshin.moafi@simsl.com) discusses the decision in a Steamship Mutual website article at: **www.simsl.com/Angara0910.html**

Profiting from Breach

by Simon Boyd

If a contract is repudiated then the innocent party may claim as damages the profits that would have been earned if the contract had been performed. This is known as the expectancy basis. Alternatively, damages may be claimed on an alternative basis known as the reliance, or wasted expenditure, basis. This compensates the claimant for the expenditure that he has incurred in reliance on the contract being performed.

But, are the expectancy basis and the reliance basis entirely different or are reliance damages simply a type of expectancy damages? Surprisingly, prior to the recent decision in the *"Mamola Challenger"* there was no English law authority on the point.

The distinction is important where the consequence of the innocent party's acts in mitigation are to make his position better than if the contract had been performed. In these circumstances are the claimant's mitigation efforts relevant to the claim for wasted expenditure, in the same way as they would have been to a claim for loss of profits?

The decision is discussed by Simon Boyd (simon.boyd@simsl.com) in an article on the Steamship Mutual website at **www.simsl.com/Mamola0810.html**

The Philippines -

The Amended Migrant Workers Act

(AMWA – Republic Act No, 10022)

Amendments to the Filipino Migrant Workers Act of 1995 which passed into law in March 2010 have become effective, the Omnibus Implementing Rules and Regulations appropriate to the Act having been published in the Philippine national press.

Significantly, the Amended Act considers the rules governing:

- The undertaking of pre-employment medical examinations of prospective workers, and;
- The provision of training to employees

The Act also introduces new legislation ostensibly aimed at protecting the welfare of the migrant worker:

- Compulsory insurance benefits have been introduced which will be provided directly to the migrant worker.

The implications of each of these developments and particularly the compulsory insurance provision are significant and should be noted by all vessel owners and operators who retain Filipino crew to work aboard their vessels. While the compulsory insurance provisions have yet to be implemented, it is expected that vessel owners and operators will very soon be required to purchase a policy of insurance for every Filipino national working aboard a vessel.

The nature of the insurance benefits, the operation of the compulsory insurance system and the implications of the Amended Act are discussed by Richard Allen (richard.allen@simsl.com) in an article written for the Club website at: **www.simsl.com/PhilippinesAMWA0910.html**

SIMSL News

HFW Charity Football Tournament

On 2 July 2010 Steamship Mutual took part in the 3rd Annual Holman, Fenwick and Willan Charity 5 a-side Football Tournament. Each team donated an entry fee with the money collected going to the Robert Levy Foundation, Childhope and the Bone Cancer Research Trust Charities. Over £5,500 was raised on the day.

The Steamship team battled their way through the group stages and then made it through two tough quarter-final and semi-final matches to take a well-deserved place in the final. Unfortunately there was to be no glorious finale with the game ending in a draw and Steamship losing the penalty shoot out 2-1.

Top row (l to r): Paul Brewer, Stuart Crozier and Capt. Vishal Khosla. Second row (l to r): Juan Zaplana, Domenico Ferrara and Wayne Craigen-Straughn

Long Serving Staff

Continuing the Steamship tradition of long service, seven members of staff recently completed either 20 or 25 years with the company.

Pictured here, left to right, are:

- Neil Gibbons, Syndicate Manager (Europe) - 20 years
- Julie Nixon, Project Leader, IT - 25 years
- Chris Durrant, Syndicate Executive (Europe) - 25 years
- Tim Lection, Syndicate Manager (Eastern) - 25 years

Lynn Purcell, Syndicate Accountant (Eastern) has also completed 20 years' service.

Also celebrating 25 years service are Katia Tripodi de Oliveira, the Manager of Steamship Mutual's Rio de Janerio office, and office administrator Ana Maria Lima. The Rio de Janero office opened in 1985.

The Directors are pleased to offer their congratulations to them all.

J.P. Morgan Corporate Challenge 2010

In keeping with a tradition established several years ago a Steamship team of 12 runners participated in the 2010 Corporate Challenge on 6 July in support of "Help a London Child".

The team performed very well with an impressive fastest time of 21 minutes and 35 seconds and most participants completing the course in under 30 minutes.

The Steamship team were (l to r) Mark Emerson, Brian Goldsmith, Sarah McGuire, Silvia Mahringer, Rory Grout (guest runner), Lorraine Burton, Milena Dramicanin, Sarah Chase, Dan Thomas and Juan Zaplana (in front)

Exam Success

Congratulations to Christine Vella, Syndicate Executive (Europe), on obtaining her QLTT (Qualified Lawyers Transfer Test) as well as Francis Vrettos and Bengi Ljubisavljevic, both of whom have passed the Tanker Chartering, Dry Cargo Chartering, and Shipping Business modules of the Institute of Chartered Shipbroking professional qualification examination.

Steamship Three Peaks Team Support Sailors' Society

Over the weekend of 19 and 20 June 2010, 38 teams from as far a field as Hong Kong, Singapore and Vladivostok took part in the Three Peaks Challenge in support of the Sailors' Society.

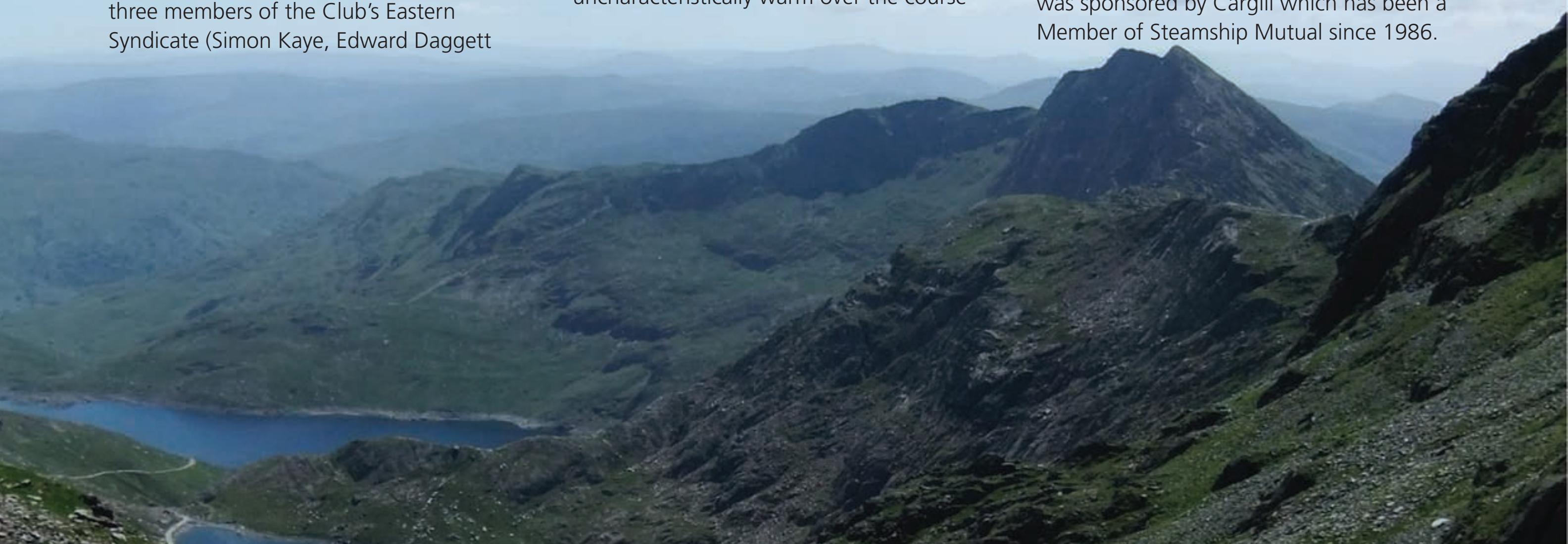
The challenge saw participants, and notably three members of the Club's Eastern Syndicate (Simon Kaye, Edward Daggett and Capt. Vishal Khosla - pictured above), attempt to climb and descend three of Britain's highest peaks within 24 hours:

- Ben Nevis – Scottish Highlands (1,344m/4,406ft)
- Helvellyn – Cumbria (950m/3,118ft)
- Snowdon – Snowdonia (1,085m/3,560ft)

Notwithstanding numerous slips, scrapes and blisters, the British weather was uncharacteristically warm over the course of weekend, and the excellent conditions allowed Steamship's team to complete the event well within the 24 hour deadline.

Thanks to generous support from many of Steamship's staff and service providers, the team succeeded in raising over £7,500 for the Sailors' Society and would like to express their thanks to all for supporting such a worthy cause.

The Sailors' Society 3 Peaks Challenge 2010 was sponsored by Cargill which has been a Member of Steamship Mutual since 1986.



• Website News • Website News • Website News •

Webpage Dedicated to Iran Sanctions

In light of heightened international attention focussed on Iran by the United Nations and other State and governmental organisations, a new webpage on the Club website features articles and materials designed to bring to Members' attention the international rules and regulations which have gained recent prominence and which may impact on shipping and insurance activities with an Iranian connection and also dealings with specified Iranian entities.

- The *Iran – Sanctions* webpage can be found at: **www.simsl.com/IranSanctions.htm**

Piracy Page

This webpage continues to be updated on a regular basis. A recent addition is *"Best Management Practice 3 (BMP3) – Piracy of the Coast of Somalia and Arabian Sea Area"*. This is the 3rd Edition of the shipping industry's Best Management Practice to deter Piracy in these areas and has been produced by the shipping industry in consultation with EUNAVFOR, the NATO Shipping Centre and UKMTO. Updates include the expansion of on the High Risk Area beyond just the Gulf of Aden, to an area bounded by Suez to the North, 10o South and 78o East. This wider application of the BMP is essential to help counter the geographical spread of the threat from Somali-based piracy. BMP3 contains further advice on Ship Protection Measures, a copy of the UKMTO Vessel Position Reporting Form, and Fishing Industry guidance. BMP3 encourages post-incident reporting to MSCHOA and UKMTO and additionally to the relevant Flag State.

- BMP3 can be downloaded via the Club website at: **www.simsl.com/IndustryPiracyBMP0610.htm**

Circulars

All Club circulars are published on the website at:

www.simsl.com/Circulars/Club-Circulars.htm.

Recent circulars include:

- B.524 - U.S. VRPs - Salvage and Marine Firefighting Requirements
- B.521 - Revision to Articles and Rules - August 2010
- B.520 - Financial Update