STEAMSHIP MUTUAL

Sea Venture

newsletter

issue 2

Contents

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Feedback and suggestions for future topics should be sent to **seaventure@simsl.com**

2005 Renewal

"We are intent on ensuring not only that service levels remain high but also that any new Members will add to the strengths of the Club."

The Renewal period is always an interesting time of year for the Members and Club. The 2005 Renewal was no different. P&I insurance is built on the concept of service, a concept we strive to meet to the greatest extent possible at all times. Inevitably, when it comes to the Renewal period relationships between Members and the Club that are close during the balance of the year may be strained when negotiating rates for the coming year. Instead of total concentration on "working together" there is an element of hard bargaining. This is particularly so when the Club is looking for increases as was the case this year. Fortunately, in almost every case it proved possible to come to a result that both the Members and Club found satisfactory and now, with the 20th February 2005 already more than two months behind us, the normal close working relationship between Member and Club is again free of the potential strains of the Renewal period.

The financial position of the Club is sound. Indeed, many Members were disappointed that given the healthy state of the Club's finances we were still looking to increase premiums. During the Renewal period we did our best to explain that total premium income was still not sufficient to pay the total outgoings by way of claims, reinsurance premiums and administration costs. Historically, much of the difference has been covered by investment income. Given the current lowered expectations in investment markets it is prudent to reduce this reliance. The increases achieved at the 2005 Renewal, taken together with increases at the previous two Renewals, will go a long way to achieve a breakeven underwriting position.

One of the strengths of Steamship Mutual has been the geographical spread of membership. It was especially pleasing that during 2004 and at this year's Renewal we have been able to welcome 26 new Members from across the globe but particularly pleasing were new Members from Greece and Turkey. The total Club tonnage as at 20th February 2005 is approximately 55,125,000 GT, an increase of approximately 316,520 GT on the figure as at 20th February 2004. This is a small but significant increase. Significant because it marks an acceptance for the market as a whole that Steamship Mutual is once again financially strong. We are intent on ensuring not only that service levels remain high but also that any new Members will add to the strengths of the Club. If that is not the case, increasing the tonnage alone is not necessary in the interests of the membership as a whole. We believe these twin goals are being achieved and continue to look forward with optimism.

Gary Rynsard

30th April 2005

Steamship Mutual Clubs Results Rated

The Steamship Clubs have recently received external recognition of their improving financial performance from two leading credit rating agencies.

Standard and Poor's (S&P) raised their 'public information' rating to BBB after having reviewed the financial results to 20th February 2004. As this rating is only based on published information it does not consider the up to date financial position nor future business projections. The S&P rating can be obtained through their website at:

www.standardandpoors.com

The A.M. Best Company recently confirmed both Steamship Clubs' A- (Excellent) financial strength ratings, generally considered equivalent to an S&P A rating, and the outlook was raised to stable from negative. The A.M. Best rating is an interactive assessment arrived at after a detailed review of internal financial reports and business projections. A.M. Best is the largest and longest established company devoted to issuing in depth reports and financial strength ratings about insurance organisations. It offers the largest coverage of insurers and reinsurers in the United States, Canada, the United Kingdom and worldwide of any interactive rating organisation. The A.M. Best Press Release can be read through the following link:

www.simsl.com/news/AM_Best/20050106_Press_Release.asp

These improvements reflect the positive developments in the Steamship Clubs' business over the past 18 months which have been reported to Members in the Management Highlights, the Mid Year Review and, more recently, in the January Financial Update Circular.

www.simsl.com/Publications/Circulars/2005/B420.asp

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Particular factors that are of relevance are:

- A continuing well diversified business with a broad spread of vessels both by vessel type and age;
- A favourable claims experience for the 2004/05 year;
- A significant reduction in the level of claims reserves for prior years;
- A less volatile investment performance due to a reduced allocation to equity type investments;
- Improving projected underwriting results even with conservative claims projections.

The positive claims developments continue to demonstrate the benefits of the reduction in underwriting risk that have been achieved and the more rigorous claims estimating and reserving techniques put in place over the last two years. It is pleasing to see that these and other improvements, the growing financial strength and increased stability, are recognised by the improved external ratings of the Steamship Clubs.

Article by Steve Ward
(stephen.ward@simsl.com)

Steamship Mutual Members Receive Top Seatrade Awards

Over 380 members of the maritime community gathered in the Guildhall, London for the 17th Seatrade Awards Ceremony Dinner on 18th April 2005 to celebrate and commend the outstanding achievements of the last year. The Seatrade Awards programme was introduced to highlight and recognise the industry's efforts in improving maritime standards, and to award those at the forefront of new thinking. The two top honours at this prestigious event were awarded to a Steamship Mutual Director and the Founder of a long-standing Steamship Mutual Member and we would like to extend our congratulations to them.

Ali Ashraf Afkhami, Chairman & Managing Director of Islamic Republic of Iran Shipping Lines (IRISL), and a Director of Steamship Mutual, was named **Seatrade Personality 2005** for overseeing the privatisation of IRISL, expanding and modernising its fleet to reach 115 vessels of 3.7m dwt, pioneering support for the domestic shipbuilding industry, and establishing a massive training programme for young Iranians in the maritime sector.

Ali Ashraf Afkhami winner of Seatrade Personality 2005.

James B. Sherwood, Founder, President and Chief Executive Officer of Sea Containers Limited, a Steamship Mutual Member for 30 years, was named the recipient of the **Seatrade Lifetime Achievement Award 2005** in recognition of forty years as an outstanding innovator in passenger and freight transport; as well as in marine container leasing, starting at a time when transporting cargoes by sea in large steel containers was a brand new idea.

James B. Sherwood receiving his award from Guest of Honour, Admiral Sir Alan West GCB DSC ADC, First Sea Lord and Chief of the Naval Staff.

Chittagong - Short Landing of Edible Oils

Most vessels calling at Chittagong to discharge bulk edible oil are faced with short landing claims.

It appears that this common problem can usually be traced to two possible causes; The first involves a refined pilferage operation starting with manipulated on board ullage readings in cases where a competent P&I club surveyor is not appointed. The second is due to the unusual calculation method used by the Chittagong customs authority which only accepts the "Bonded Temperature Quantity" of the cargo (in shore tanks) in order to ascertain the duty and/or tax. Experience shows that this method produces a shortage of approximately 2.20 MT for every 100 MT of cargo discharged.

The risk of the first problem can be mitigated by insisting that a competent surveyor is appointed. However, the second is more problematic. After intense pressure from industry interests, in March 2003 the Bangladeshi customs authority agreed to implement measures to adopt an internationally accepted measurement method. Despite this agreement, these measures have yet to be implemented.

A 1990 decision of the High Court Division of the Supreme Court held that an onboard ullage survey report will prevail over a shore tank survey report in the case of any discrepancy. Despite this ruling and the customs authority agreement of March 2003, customs authorities are still imposing fines based on their shore tank bonded temperature quantity calculations. While there are good prospects of success for carriers and their insurers wishing to contest such fines in court based on the 1990 High Court ruling and the customs authority's own 2003 agreement, the potential liability for fines is unlikely to be resolved in the short term. This is because the agent is jointly liable for the fine and will often demand security from the owner which can result in delay of the vessel.

Until the Bangladeshi customs authority amends its practices, the risk of delay in these circumstances can often be avoided by appointing agents that agree in advance to accept an a Club Letter of Undertaking if, or when, a fine is levied on the agent and vessel owner. Club Letters of Undertaking are increasingly recognised by agents in Chittagong as acceptable security.

With thanks to Interport Ship Agents Ltd for supplying this information.

Predicament on Proximate Cause of The Tsunami

"...under which 'peril' might the loss or damage caused by the Tsunami be covered?"

The Tsunami of 26th December 2004 has stirred up a debate in insurance circles; under which "peril" might the loss or damage caused by the Tsunami be covered?

One view is that the waves and weather caused by earthquake/volcanic eruptions are embraced within "perils of the seas", which would also include disturbances of the sea or a rise of the sea bottom caused by earthquake. The other view is that an earthquake under the seabed initiated the Tsunami and, therefore, the proximate cause of damage is the earthquake and not "perils of the seas".

For vessels covered under the Standard Hull Policy (ITC Hulls 1/10/83) the distinction is only of academic interest since "perils of the seas" and "earthquake" are both insured under the Perils Clause (Clauses No. 6.1.1 and 6.1.8 respectively).

However, the question has to be resolved one way or the other when vessels are insured under the ITC Hulls Port Risk (20.7.87) as well as Institute Clauses for Builders' Risk (1.6.88) because both of these clauses expressly exclude loss or damage caused by earthquake and volcanic eruption.

With thanks to Leena B. Mody of J B Boda Adjusters, Mumbai, for preparing this article. A more detailed analysis of this issue can be found in a Steamship Mutual website article at:

www.simsl.com/Articles/Tsunami0405.asp

An Arbitrator's Perspective

Writing the Award at the end of an arbitration is the mere tip of the iceberg for maritime arbitrators in London.

Once appointed, the arbitrators have the responsibility of running the arbitration and making it proceed as smoothly as possible. With the parties to the dispute arguing over every step to be taken in the arbitration, arbitrators face the, often difficult, task of balancing the interests of the parties to ensure the *"fair resolution of disputes by an impartial tribunal without unnecessary delay or expense"* (Arbitration Act 1996, s.1). This requires varying combinations of firmness and flexibility depending on the circumstances.

In the first of two articles written for Steamship Mutual, Clive Aston, an LMAA Arbitrator, offers an arbitrator's perspective on the considerations that influence the directions made by arbitrators during the course of an arbitration. The article can be found on the Steamship Mutual website at:

www.simsl.com/Articles/Arbitrator0405.asp

U.S. - Willful Concealment of Pre-Existing Injury

In *Brown v Parker Drilling* the US Court of Appeals for the Fifth Circuit recently ruled that willful concealment of pre-existing injuries may exonerate a maritime employer from liability for alleged personal injury. The claimant in this case, a floorhand, alleged that he injured his back whilst working for Parker Drilling. Parker refused to pay damages and Maintenance and Cure. As a consequence the claimant brought suit. At trial, Parker showed that the claimant had a prior history of back injuries which he had not disclosed on his employment application and that he was fired from his previous job for lying.

The Appeal Court reversed the first instance decision and ruled that the plaintiff intentionally misrepresented or concealed medical facts, that the non-disclosed facts were material to the defendant's decision to hire him and that a connection existed between the withheld information and the alleged injury that was the subject of the lawsuit.

This is an important decision for maritime employers and insurers. However, the decision has been appealed. It is interesting to note that the Fifth Circuit seemed to accept willful concealment as a defense to the Jones Act claim when it is has previously been accepted as a defense to Maintenance and Cure claims only. The point was not directly addressed by the Fifth Circuit and may prove to be an issue on appeal.

Article by Mike McAleer
(mike.mcaleer@simsl.com)

Containerised Cargo - What Constitutes a "Package"

"...is this the container itself or the number of shipping units therein?"

What is a package where a container is involved; is this the container itself or the number of shipping units therein? And what bearing, if any, do the words "said to contain" or descriptions of cargo in the bill of lading have? These issues are constant themes in claims involving lost or damaged containers.

In *The River Gurara*, a 1998 English Court of Appeal decision, the bill of lading was qualified with the words "said to contain" and also provided that if the container was not packed by the carrier the container was to be the package or unit for limitation purposes. Notwithstanding these words it was held that the individual cartons in the container, and not the container itself, were relevant to calculate limitation.

The Court of Appeal also held that for the purposes of package limitation the description in the bill of lading was not decisive, otherwise the carrier, would be able to "sneak around" the limits set out in the Hague Rules. Article III Rule 8 makes any attempt to avoid or lessen liabilities or responsibilities of the carrier, as set out in the Hague Rules, null and void.

The bill of lading in a recent Australian case, *The El Greco,* was subject to the Hague-Visby Rules. Article IV Rule 5 (c) of these Rules provides that:

> *"…where a container, pallet or similar article of transport is used to consolidate the goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package of unit".*

In this case the bill enumerated the total number of individual items carried but not the lesser number of packages in which the individual items were shipped within the container. The court held that the individual items were not packages for limitation purposes.

The issues raised in the both *The River Gurara* and *El Greco* are discussed in a Steamship Mutual website article by Neil Watson **(neil.watson@simsl.com)** at:

www.simsl.com/Articles/ContainerPackage0405.asp

Athens Convention - Application to Hong Kong/Macau and Hong Kong/ Mainland China Routes

The 2002 Protocol to the Athens Convention established a new liability regime for passenger death and personal injury claims which required carriers to maintain insurance in respect of such liability and to allow passenger claims to proceed directly against insurers. A detailed discussion of the 2002 Protocol appeared in old-style Sea Venture Vol.21 at page 76 and can be seen on the Steamship Mutual website at:

www.simsl.com/Sea_Venture/SeaVenture_Vol21/Section_4/01_AthensConv.asp

After the return of sovereignty of Hong Kong (1997) and Macau (1999) to China there had existed a vacuum in legislation governing the limitation of liability of operators of passenger vessels trading between Mainland China, Hong Kong and Macau. The Athens Convention, which had previously applied to such routes, no longer applied as these routes were no longer considered "international" or, at least, no longer involved passing through any international waters between domestic ports. The operators of passenger vessels on these routes kept the Athens Convention provisions in their ticket conditions in an attempt to maintain them as a matter of contract in the absence of applicable statutory provisions.

The Hong Kong Special Administrative Region government was lobbied to amend the legislation to bring the provisions of the Athens Convention back to these routes. Consequently, a legislative change took place in January 2005 to reintroduce the Athens Convention and Protocol to the carriage of passengers between Hong Kong and Macau and between Hong Kong and Mainland China. (The Merchant Shipping (Limitation of Shipowners Liability) (Amendment) Bill 2005 was gazetted on 7th January 2005 to the above effect.)

Whilst reservations as to the provisions of the 2002 Protocol remain, at least the uncertainty that had existed in this region has been resolved.

This article was written by Edward Lee of Steamship Mutual's Hong Kong office **(edward.lee@simsl.com)**

Wood Packaging Material - International Guidelines

Solid wood packaging material made of unprocessed raw wood is a pathway for the introduction and spread worldwide of a variety of pests.

The 2002 Guidelines for Regulating Wood Packaging Material in International Trade are an International Standard for Phytosanitary Measures (ISPM) developed under the International Plant Protection Convention (IPPC). The Guidelines, also known as ISPM 15, list the major categories of pests and establish a heat treatment and a fumigation treatment determined to be effective against them.

The EU, United States, Canada, Australia and New Zealand and at least 10 other countries have implemented (or will shortly do so) national legislation based on ISPM 15. Vessels intending to call at these countries will need to ensure that any solid wood packaging materials on board comply with these requirements.

A Steamship Mutual website article by Naomi Cohen **(naomi.cohen@simsl.com)** at:

www.simsl.com/Articles/WoodPackaging0904.asp

provides further information on ISPM 15, including links to the 2002 Guidelines and other useful reference sources.

Hull Fouling - Charterparty Issues

Hull fouling is a well-known problem affecting vessels trading in warm weather/water ports.
It can lead to loss of time from diminished vessel performance and lost time and costs associated with hull cleaning

Resulting claims include Charterers' claims for underperformance and that the vessel is off-hire for the period of hull cleaning. Owners' claims include damage to the vessel due to fouling and claims for indemnity from Charterers for hull cleaning costs.

Determining factors include whether:

- The port was within the trading limits as provided within the charter.
- Time spent at the warm weather/water port was usual and expected for that time of year and for that vessel.
- The marine growth in the water was usual and expected at that place for that time of year.
- Either of the parties had been aware of the environmental factors prevailing at that place before the vessel traded there.

The issues which typically arise in such cases were helpfully revised in a recent High Court decision in which the Club's members were successful against owners in a defense coordinated by charterers and sub-charterers: *Action Navigation Inc v Bottiglieri Navigation Spa (The "Kitsa")* [2005] EWHC 177.
A discussion of these issues by Natalie Campbell **(natalie.campbell@simsl.com)** appears in a Steamship Mutual website article at:

www.simsl.com/Articles/HullFoul0405.asp

Straight Bills of Lading - Do the Hague-Visby Rules Apply?

Is a straight bill of lading a "bill of lading or similar document of title" within the meaning of the Hague-Visby Rules Article I(b) and section 1(4) of UK COGSA 1971. This was the central issue in *"The Rafaela S"*, a case in which the House of Lords rendered its judgment in February this year.

The financial consequences in this case amounted to approximately US$150,000. This figure represented the difference between the amounts the owners would be liable to pay depending on whether the cargo claims were subject to UK COGSA 1971 or US COGSA 1936 package limitation. The Court found that a straight bill was a "bill of lading or similar document of title" and the more generous UK COGSA 1971 applied.

The bill in this case was issued prior to UK COGSA 1992 coming into force. This later legislation provides that straight bills are to be treated in the same way as waybills and so are not required to be presented unless they state otherwise. The bill of lading in *"The Rafaela S"* expressly provided for presentation as a pre-condition to delivery. The House of Lords was therefore not required to rule on whether straight bills without such an endorsement must be presented for delivery. Nonetheless, Lord Bingham, who gave the lead judgment, said that presentation of straight bills should be required. Although these remarks have no binding authority, they are a strong indication of how the Courts may deal with this issue in future. Set against the background of UK COGSA 1992, this creates something of an anomaly.

Sacha Patel **(sacha.patel@simsl.com)** gives a fuller analysis of this case, *JI Macwilliam Co Inc V Mediterranean Shipping Co - "The Rafaela S"*, in a Steamship Mutual website article at:

www.simsl.com/Articles/RafaelaS0405.asp

Does the Bill of Lading Reflect the Intended Voyage?

What are the implications of issuing a bill of lading which does not reflect the actual voyage by which goods will be transported?

In a recent case the English High Court had to consider a bill evidencing a contract between the maritime carrier and the shipper of the cargo that did not reflect the fact that the initial shipment was to be by feeder vessel before transhipment. Drafting the bill of lading in this way is not unusual. In this case, however, the shippers' letter of credit did not allow transhipment and the planned transhipment was not declared to cargo underwriters. Unfortunately, the feeder vessel capsized at the transhipment port. The receivers declined to accept the shipping documents and cargo underwriters declined to cover the loss. Therefore, shippers sued on the bill of lading alleging that they had been induced to enter into a contract of carriage with the defendant Carriers on the basis of a misrepresentation in the bill.

A stamp on the face of the bill provided: "Transhipment Not Allowed". The High Court decided that the shippers were always aware that the cargo would be transhipped and the claims failed. However, would the result have been the same if the receiver was the claimant and, in those particular circumstances, what are the club cover implications?

These issues and further details of this case, *Sabo S.A. v United Arab Shipping Co.* (*SAG*) [2005] EWHC 307, are given in a Steamship Mutual website article by Darren Heppel **(darren.heppel@simsl.com)** at:

www.simsl.com/Articles/BoLSabo0405.asp

Thermal Imaging

"Some shipowners have already acknowledged the value of thermography as a cost-saving maintenance instrument."

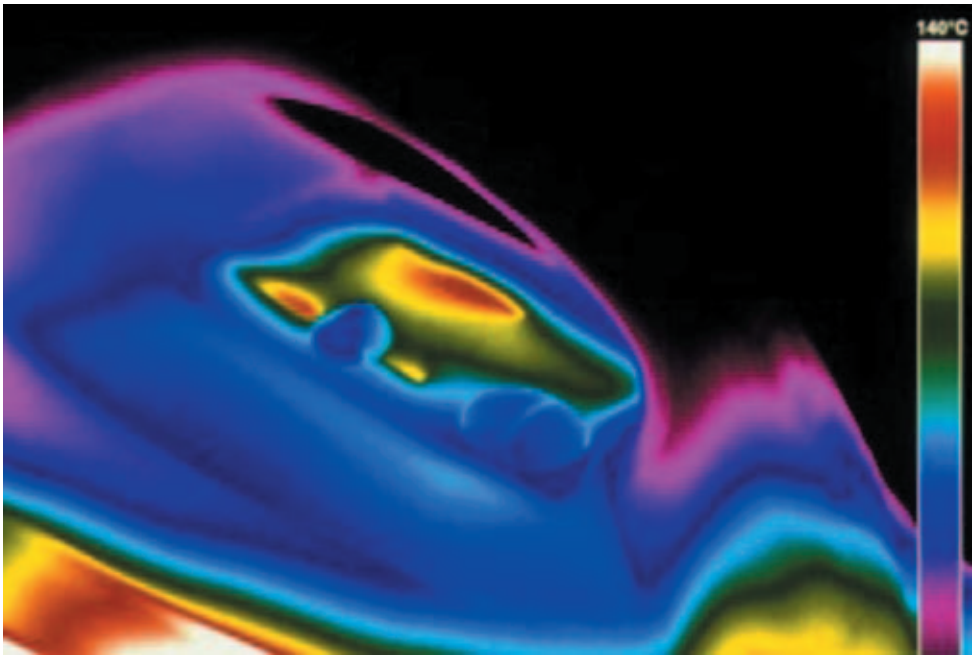
Marine surveyors now have a new weapon in their technical armoury – thermal imaging. Shore-based industries have long acknowledged the value of infrared thermography as an efficient tool in damage prevention and predictive maintenance. But the equipment had always been too expensive for the marine industry and too difficult to handle in confined spaces.

Following recent developments, however, marine surveyors can now use the same revolutionary technology, previously available only to the US Navy, for pre-purchase and insurance and P&I surveys, appraisal and damage inspections. The Dutch marine surveying company of BMT De Beer b.v. (BMT Surveys), with offices in Rotterdam and Antwerp, has found that the equipment allows its surveyors to scan instantly the structural integrity of any vessel, as well as electrical propulsion and fuel systems, navigation and other on-board electronics.

Jeroen de Haas, the company's managing director, comments: "Some shipowners have already acknowledged the value of thermography as a cost-saving maintenance instrument and it is the expectation that P&I clubs and hull insurers will incorporate the technology in their ship condition and risk analysis programmes within the next couple of years".

The equipment is also effective in relation to reefer transport, not only to detect hazardous fire risk spots that would otherwise probably remain unnoticed, but also to ensure that correct transit temperatures are maintained for cargoes such as bananas, deciduous fruits and citrus fruits. An infrared picture can show up temperature differences instantly.

With thanks to BMT de Beer b.v. Rotterdam for preparing this article.



Cargo Securing Manuals

Regulations VI/5 and VII/6 of the 1974 SOLAS Convention as amended require cargo units and cargo transport units to be loaded, stowed and secured throughout the voyage in accordance with a Cargo Securing Manual (CSM) approved by the Flag State Administration and drawn up to a standard at least equivalent to the guidelines developed by the International Maritime Organisation.

The Flag State Authority should stamp the front page of a CSM with an approval stamp that reads along the lines:

> *"Cargo Securing Manual approved in accordance with Reg.5, Chapters VI/VII SOLAS Convention. Contents of CSM have been found to be in accordance with the conditions and requirements as described in IMO MSC Circ.745".*

However, the degree to which reliance can be placed on the fact that a CSM is approved by the Flag State may be somewhat undermined by caveats set out in the wording of the approval stamp. For example:

> *"Completeness of securing devices on board the ship has not been verified against provisions in the CSM. Master responsible for completeness and satisfactory condition of the respective equipment and for adequacy of the CSM concerning the type of cargo carried".*

There is no point in having an approved CSM if it does not agree with what is physically possibly on the ship. Therefore, a CSM needs to be tailored to meet the specific needs of a ship.

For a vessel carrying freight containers the following are suggested:

- CSM should not be too complex ;
- Lashing arrangements should not be given without the necessary portable and fixed equipment being available on board; and
- Restrict the number of stowage and securing arrangements to the practical operation of the vessel

Related to the need to tailor the vessel's CSM is the risk of inaccurate or insufficient information on container weights and stowage plans provided by ship planners.

Cargo Securing Manuals - cont'd

"...there is a fine line between what constitutes a reasonable or an unreasonable request for changes in the loading and lashing programme or a refusal to continue loading..."

This may be a result of a mistake or lack of knowledge or inexperience on the part of the planner or simply the conflict of having to resolve the problem of an impossible stow or, indeed, to accommodate containers that arrive late for shipment as against the vessel's requirements. This may lead to problems such as incorrectly declared container weights, heavy containers being loaded over lighter containers, stack weights and permissible limits being exceeded and wrongly calculated stability. At worst, these issues may lead to the vessel becoming unseaworthy.

It is, of course, good ship's practice not to allow loading operations to commence without receipt of a proposed stowage plan or, at least, a stowage plan for those containers about to be worked. This plan must then be checked against the ship's computer loading/lashing programme and/or CSM to ensure that permissible limits are not exceeded. An inspection of the stowage plan should then reveal instances of heavy containers being loaded over lighter containers and the necessary changes to be made in the loading/lashing operation.

However, wrongly declared container weights are difficult if not impossible to identify. The only guard is vigilance on the part of the ship's crew in terms of adequate supervision of loading. If feasible, loaded containers should be cross-checked against the stowage plan and computer programmes and the CSM used to ensure that the ship's requirements are being complied with. Masters should record any instances of overloading or defective stowage and immediately report any such defects to the vessel owner. Where appropriate, notes of protest should be issued to charterers and/or the terminal.

In extreme cases it may be appropriate to refuse to load additional containers until any overloading or defective stow is corrected. However, there is a fine line between what constitutes a reasonable or an unreasonable request for changes in the loading and lashing programme or a refusal to continue loading, as well as difficult issues as to when a Master ought to interfere in a planned stow of containers. For example, see the article *"Stowage Of Dangerous Goods – Who Is Responsible?"* on page 18 of this issue of Sea Venture. If the Master is wrong, he may invite claims for delay or off hire, or risk sailing with an unseaworthy ship. In extreme cases expert advice should be sought at the earliest possible opportunity.

With thanks to Jim Chubb of BMT Murray Fenton Limited for preparing this article.

References:

IMO Guidelines for the preparation of the Cargo Securing Manual
IMO Code of Safe Practice for Cargo Stowage & Securing

All at Sea - The Americans with Disabilities Act and Cruise Ships

On 28th February 2005 a landmark case was heard by the United States Supreme Court that will decide whether and to what extent the ADA's requirements for accessible accommodations should apply to foreign cruise ships that enter the U.S. In *Spector v Norwegian Cruise Line,* the Fifth Circuit Court of Appeals held, in a case arising in Texas, that the ADA cannot be applied on foreign ships without a clear statement to that effect by Congress. The Eleventh Circuit Court of Appeals ruled just the opposite in an earlier case arising in Florida, *Stevens v Premier Cruises,* reasoning that when ships enter U.S. waters they automatically become subject to U.S. laws. The ADA itself is silent.

The Supreme Court unanimously agreed to decide the issue because the lack of certainty on what accessibility standards control at sea (not to mention conflicts between land side ADA mandates and international treaties governing ship construction and operation) has left the industry in a quagmire. These problems are exacerbated by the failure of either the U.S. Department of Transportation or Department of Justice to promulgate any ADA standards for cruise ships in the 15 years since the law was first passed. Meanwhile, other nations, including the U.K. (Disability Discrimination Act 1995), have adopted their own standards.

The *Spector* case has attracted national and international attention, not only because of the importance to cruise ships worldwide, but also due to the potential ramifications the decision could have on the application of other domestic laws to shipping generally. The Supreme Court is expected to render its decision by this coming summer.

A fuller discussion of this issue is given in a Steamship Mutual website article by Lawrence W. Kaye of Kaye, Rose and Maltzman, LLP at:

www.simsl.com/Articles/ADA0405.asp

U.S. - Enforcement of Arbitration Clauses in Seamen's Employment Contracts

In Sea Venture Issue 1 we detailed the growing trend of US Courts dismissing lawsuits filed by foreign seaman whose contracts contain an overseas arbitration clause.

Following the Fifth Circuit decision in *Francisco v Stolt Achievement,* the Eleventh Circuit Court of Appeals has ruled in a similar vein in the case of *Bautista et al v Norwegian Cruise Lines.*

The M/V "Norway" suffered a boiler explosion while in the Port of Miami. Six of the Filipino crewmembers represented in the *Bautista* complaint were killed. Each of their employment agreements included an arbitration clause.

In considering whether the complaint should be dismissed the Eleventh Circuit started its analysis with the *Francisco* decision. The Court went further than the Fifth Circuit by discounting entirely the exception for seaman's contracts in the Federal Arbitration Act. The reasons for such an exception are not specifically stated although the assumption is that subsequent treaty obligations in U.S. law supersede prior inconsistent Acts of Congress.

The potential implications of this decision are both welcome and far reaching.

The Steamship Mutual website article by Gary Field **(gary.field@simsl.com)** dealing with the issues raised in the *Francisco* decision can be seen at:

www.simsl.com/Articles/USFilipino1104.asp

Stowage of Dangerous Goods - Who is Responsible?

On a vessel chartered on NYPE 1946 terms a container of anhydrous calcium hypochlorite was stored adjacent to a bunker tank and subsequently exploded causing serious damage to the vessel and other cargo. Who was responsible – Owners or Charterers?

Clause 8 of the charterparty provided:

"…Charterers are to load, stow, lash, secure, unlash, and trim and discharge and tally the cargo at their expense under the supervision of the Captain…"

The container was stowed by the Charterers according to their plan but Charterers maintained that Owners were nonetheless responsible for the resulting damage; They sought to argue that Owners were responsible for the consequences of the explosion on the grounds that (1) Owners had the right to supervise stowage, (2) Owners had superior knowledge of the workings of the vessel or (3) Owners had a duty to intervene to avoid unseaworthiness.

These issues were the subject of London Arbitration. The arbitrators found that the Charterers had failed to establish that any of these provisos should apply and, accordingly, that the Charterers were responsible for the damage caused by a dangerous cargo that they had stowed in contravention of the IMDG Code.

This case is discussed in further detail in an article by Neil Watson **(neil.watson@simsl.com)** which appears on the Steamship Mutual website at:

www.simsl.com/Articles/DangStow0405.asp

Compulsory Insurance Requirements

Japan – Non-Tanker Vessels

From 1 March 2005 non-tanker vessels of 100 GT and above calling at Japanese ports must comply with the following requirements for entry:

- have P&I insurance for the vessel
- carry the relevant certificate on board
- report the status of insurance before entering a port.

The new regulations require vessels to have insurance cover in respect of bunker spills and wreck removal. Insurance must be provided by "designated insurers" and Clubs within the International Group are included within this definition.

The regulations impose strict liability and joint and several liability on owners and charterers in respect of bunker spills.

The insurance status of the vessel along with certain other vessel information must be reported to the relevant District Transport Bureau by 12.00 on the day preceding arrival.

Further details, including a link to a guidance document issued by the Japanese authorities and a downloadable pro forma of the insurance status report, are given in a Steamship Mutual website article by Naomi Cohen **(naomi.cohen@simsl.com)** at:

www.simsl.com/Articles/Japan_CompIns1104.asp

Georgia – All Vessels

With effect from 1 April 2005 all foreign vessels of 500 GT and above visiting Georgian ports must have insurance cover in respect of oil spills, including bunker spills and wreck removal. P&I cover from Clubs within the International Group is acceptable.

A report of the status of insurance must be submitted by the master or local agent to the Harbour Master prior to the vessel's entry into port. No separate reporting form is required - this information can be submitted at the same time as the other pre-arrival vessel information.

Failure to comply with the requirements can give rise to vessel inspection, delay and penalties.

The Georgian Maritime Transport Administration circular on this subject together with other details are given in a Steamship Mutual website article based on information supplied by GEOMAR at:

www.simsl.com/Articles/Georgia_CompIns0305.asp

U.S. - Vessel Response Plan Requirements for Non-Tank Vessels

In Club Circular B.428 of April 2005 Members were advised of new regulations which require vessel response plans for non-tank vessels of 400GT and above to be prepared and submitted to the U.S. Coast Guard by 8 August 2005.

Pending final regulations, the U.S. Coast Guard has issued interim guidance that specifies that owners and operators of non-tank vessels operating in U.S. waters will require:

- A vessel response plan;
- Contract(s) with organizations providing spill response (OSRO), salvage, firefighting and lightering services, such organization(s) to be identified in the plan;
- A contract with an English speaking Qualified Individual (QI), having full authority to implement removal actions, and a Spill Management Team, to be identified in the plan.

Once a plan has been reviewed and approved the Coast guard will issue an authorization letter. Non-tank vessels will not be able to operate in U.S. waters after 8th August 2005 without an authorization letter. Bearing in mind the number of plans which will require approval and the time each review will take, plans should be submitted to the Coast Guard as soon as possible.

Further details of the regulations and information on arrangements negotiated by the Club with organizations providing plan writing, OSRO, QI and Spill Management services are contained in Circular B.428 which can be viewed on the Steamship Mutual website at:

www.simsl.com/Publications/Circulars/2005/B428.asp

Selection of Recent and Forthcoming Publications

Loss Prevention Materials – produced in association with Videotel

Prevention and Reaction to Marine Oil Spills

The three videos comprising this programme are:

- Prevention and Reaction to Marine Oil Spills under MARPOL
- Prevention and Reaction to Marine Oil Spills under OPA
- Prevention and Reaction to Marine Oil Spills : The Seafarer's Role

Originally produced in 1997, all the videos have now been updated to take into account changes in the relevant legislation and organisation in relation to oil spill response.

Safe Anchoring

Safe anchoring is one of the most critical skills of good seamanship. It is also one of the most basic.

This video and support book or CD-ROM package highlights and explains the proper function and design limits of windlass, anchor and cable aboard vessels of all sizes as well as demonstrating their correct use and maintenance. Other sections deal with how to identify and deal with a dragging anchor, the importance of close anchor watches and scenarios to avoid when weighing anchor.

Members are entitled to a 20% discount from the standard price for purchase or rental of these programmes. Further details can be obtained from: Videotel Marine International, 84 Newman Street, London, W1P 3LD, Tel: +44 0171 299 1800, Fax: +44 0171 299 1818

Planned Programmes:

- Environment Officer Training
- Crew Fatigue Management
- Freefall Lifeboats

Other Loss Prevention Materials

"A Team Effort" – A Guide to Casualty Investigation and Claims Handling

As detailed in Sea Venture Issue 1, in November 2004 Members received the Club's new claims handling guidance tool "A Team Effort" in CD-ROM format. This publication is in the process of being updated for the 2005/2006 year and will include additional materials.

Selection of Recent and Forthcoming Publications - cont'd

Circulars

Small Tanker Oil Pollution Indemnification Agreement (STOPIA)

The Supplementary Fund Protocol of 2003 came into force in Denmark, Finland, France, Germany, Ireland, Japan, Norway and Spain on 3 March 2005. The article *"Increasing Compensation for Damage from Oil Pollution – Sharing the Burden"* in Sea Venture Issue 1 explained that STOPIA was designed to address the concern that shipowners should take a share of the increased compensation burden.

Club Circular B.422 of February 2005 informed Members that with effect from 3rd March 2005 the Club Rules will have the effect of entering fully mutual members who are owners of tankers of 29,548GT or less, and which may carry persistent oil in bulk as cargo, in the STOPIA scheme. Further details are given in the Circular at:

www.simsl.com/Publications/Circulars/2005/B422.asp

Articles published on the Steamship Mutual Website

- Brazil - Environmental Damage

  www.simsl.com/Articles/brazil_environmental_damage.asp

- Canada - Response Organisation Fees

  www.simsl.com/Articles/Canada_ROFees.asp

- China - Limitation Of Liability In Personal Injury Claims

  www.simsl.com/Articles/China_PI_Spring0205.asp

- Indonesia - Illegal Export Of Protected Hardwoods

  www.simsl.com/Articles/Indonesia_IllegalLogging0305.asp

- Stowaways In Vessel Rudder Compartments

  www.simsl.com/Articles/NewOrleansStow0105.asp

- Turkey - Pollution Fines

  www.simsl.com/Articles/Pollution_Turkey0104.asp

- Ukraine - Ballast Water Management

  www.simsl.com/Articles/Ukraine_ballast0305.asp

- Western European PSSA - Mandatory Reporting For All Tankers Carrying Heavy Grade Oils

  www.simsl.com/Articles/WEPSSA_MandatReport0205.asp

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