STEAMSHIP MUTUAL

newsletter

Sea Venture

issue 5

Contents

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

Introduction

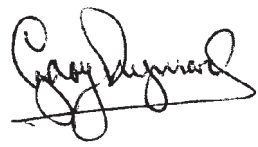
"It is essential that any growth in entered tonnage does not detract from the sound underwriting base of the Club."

In considering the level of the standard increase for the 2006 year the Directors felt able to set the increase at a lower level than has been seen in previous years. This turned out to be at the lower end of the range set by International Group Clubs. The intention was to strike a balance between the need to continue improving the underwriting result whilst acknowledging the sound financial position of the Club. But an increase is still an increase. It was therefore not a complete surprise that hard negotiations ensued. The fact that freight rates were off their 2004 peaks, added to the improvement in Members' records probably only strengthened the natural determination of shipowners to get the best deal possible. It is pleasing to be able to report that by the completion of the renewal a satisfactory increase had been achieved without the loss of valued Members.

At the renewal there was a net increase of owned tonnage of 1,600,243, equivalent to 4% of the owned entered tonnage. We are pleased to welcome new Members from China, Germany, Slovenia and the United States. Several Members increased their entered tonnage by transferring tonnage from other International Group Clubs. Prior to the renewal and during the course of the year there was a net increase of tonnage of 1,459,427. Taken together this represents an 8% increase in entered owned tonnage. Given that the world fleet is growing by approximately 7% per annum, the Club's entered tonnage is growing in a measured manner.

Growth in tonnage by itself is not necessarily beneficial. It is essential that any growth in entered tonnage does not detract from the sound underwriting base of the Club. The realistic assessment of risk, vigilance in reviewing ship management standards, resisting the lure of new tonnage at uneconomic rates, will all play their part. We are fortunate to be currently enjoying benign economic circumstances reflected in satisfactory freight rates and growth in world shipping. History teaches us that more challenging times must inevitably lie ahead. It behoves us to ensure that we are fit and ready for these challenges as and when they occur.

Gary Rynsard



1st May 2006

CMA CGM - Proud Sponsors of Dame Ellen MacArthur's Asia Tour

CMA CGM played a crucial part in Dame Ellen's Asia Tour when on 9 February 2006 Dame Ellen's trimaran was loaded on to the forward hatches of the "CMA CGM Bizet", a 6,662-TEUS container carrier entered with Steamship Mutual, for the 23 day voyage from Southampton to Hong Kong. The 75 foot long trimaran was loaded onto cradles on a bed of 26 40 foot platforms occupying 84 TEUS and was securely lashed with nylon lashings so as to avoid damage to the hull. CMA CGM's bill of lading was claused with the normal deck carriage wording.

Dame Ellen's tour of Asia's largest cities began on 25 March and will end in early May. She aims to visit Japan, South Korea, Vietnam, Singapore, Taiwan and five major cities in China. This is the first time Dame Ellen will have sailed her trimaran in Asia and she hopes to set a number of sailing records along the Chinese coast.

Once her Asian Tour is complete, CMA CGM will be transporting Dame Ellen's Trimaran back to Le Havre from Singapore on 23 May onboard the "CMA CGM Elbe", a 3,000-TEUS container carrier.

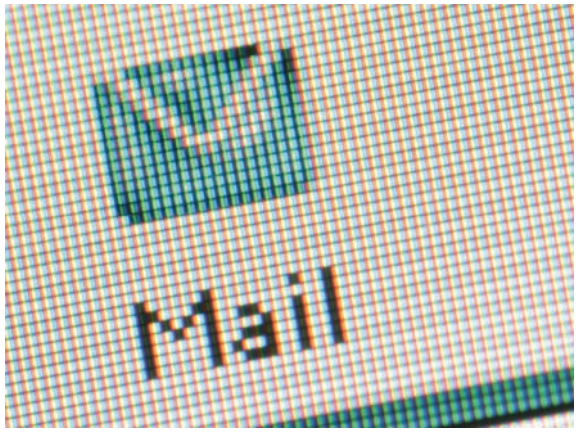
"Spam" Email Or Effective Service?

Is service of notification of arbitration by email effective service for the purposes of the Arbitration Act 1996? This was the question before the English Commercial Court when an application challenging an arbitration award was made on the grounds of serious irregularity. Charterers claimed to have been unaware of the proceedings which Owners had purported to serve by email. The notification of arbitration and all subsequent correspondence had been sent by email and had allegedly been ignored as "spam".

The facts of the case and the decision in *Bernuth Lines Ltd v High Seas Shipping Ltd ("The Eastern Navigator")* are discussed in greater detail in a case report by Sian Morris **(sian.morris@simsl.com)** which can be found on the Steamship Mutual website at:

www.simsl.com/Articles/EasternNavigator0406.asp

"notification of arbitration...had been sent by email and had allegedly been ignored as "spam" "



China - Evidence of Adequate Stowage and Lashing

The second article in a series focussing on maritime cases in the People's Republic of China (see Sea Venture issue 4 *"China - Emerging Trends in Maritime Litigation"*) looks at another decision from the Shanghai Maritime Court.

Rohan Bray's case note on *PICC Jinhua Branch v The Charterers of the"Ville De Tanya"* considers the interaction of the carrier's obligation properly and carefully to stow cargo and the error of navigation defence under the PRC Maritime Code. This case also sheds some light on the issue of how the PRC courts will treat choice of law clauses in standard form bills of lading.

Rohan's article can be found on the Steamship Mutual website at:

www.simsl.com/Articles/PICC0406.asp


image courtesy of SMIT Salvage B.V.

Salvage - Review of SCOPIC Rates

SCOPIC - the Special Compensation P & I Clause - was introduced in August 1999 to provide an alternative to Article 14 of LOF in order to allow a simplified method for dealing with special compensation under salvage contracts.

The clause provides that the Shipowners Casualty Representative (SCR) committee (comprising 3 representatives from ship-owners, salvors, property insurers and the P&I Clubs) should review the SCOPIC rates for personnel and equipment on an annual basis.

In order to ensure that salvors undertake salvage work and thereby protect the environment in cases where the chances of saving property are doubtful, it has always been the intention that SCOPIC rates be generous and encouraging and, in that sense, "profitable".

Reviews in previous years had not considered any adjustment in the rates to be necessary. However, a review of personnel rates undertaken by 2 independent salvage experts in 2005 indicated that the value of these rates has been eroded by inflation in the 6 years since their introduction to the extent that, whilst they are still considered to be "profitable", they are now only marginally so.

Accordingly, it has been agreed that:

- there will be a 10% increase in personnel rates for all salvage contracts incorporating SCOPIC signed after 1 January 2006;
- there will be a moratorium on SCOPIC rate increases for tugs and portable salvage equipment until September 2006 to allow time for a review as to the actual daily cost of this equipment. The ISU will arrange for the collection of all the necessary data so that the SCR committee can undertake such a review;
- following this review, tariff rates for tugs and equipment will be adjusted to reflect actual cost plus an agreed percentage mark-up;
- thereafter, SCOPIC tariff rate reviews for personnel, tugs and equipment will be undertaken on a triennial basis.

With thanks to Colin Williams **(colin.williams@simsl.com)** for preparing this article.

Further information on Salvage, SCOPIC and related issues can be found on the Steamship Mutual website at:

www.simsl.com/Articles/Contents/S_Contents.asp#Salvage

Arab Boycott Of Israel - Maritime Implications

"...ships calling at an Arab League port after calling at an Israeli port will have their names and other details placed on the blacklist"

The Central Office of the Arab Boycott of Israel in Damascus (the Central Boycott Office) was established by the Arab League in 1951. Enforcement of the boycott varies widely from country to country within the Arab League.

In a maritime context, ships calling at an Arab League port after calling at an Israeli port will have their names and other details placed on the blacklist maintained at the Central Boycott Office. These details are circulated to the national Boycott offices of other States in the Arab League. The countries that apply and enforce the Boycott most strictly are Iraq, Lebanon, Libya and Syria.

Blacklisting is based on a vessel's IMO number and thus changes in name or ownership will not affect blacklisting. The consequences of blacklisting include:

- Loading or discharging cargo may be prohibited
- Detention
- Fines
- Impact on sale of a vessel due to warranty that the vessel is not the subject of blacklisting
- Removal from the blacklist is a complicated and time consuming process
- A vessel which has been removed from the blacklist but is subsequently discovered to have called again at an Israeli port will blacklisted permanently.

Further information about the Boycott and the de-blacklisting procedure is given in an article based on information supplied by Elias Marine Consultants, Cyprus. The article can be found on the Steamship Mutual Website at:

www.simsl.com/Articles/ArabBoycott0406.asp

Stowage of Dangerous Goods - Who is Responsible - An Update

In Sea Venture issue 2, the decision of the London Tribunal dealing with the division of responsibility between Owners and Charterers for the stowage of dangerous goods on board a container vessel was discussed. The vessel was chartered on an NYPE charterparty with an unamended clause 8 (that is without the addition of the words "and responsibility").

The Tribunal had decided the Charterers were responsible for damage to both the vessel and cargo caused by the stowage of a container in contravention of the IMDG Code. The Charterers appealed the decision before the High Court in London arguing that the arbitrators had erred in their interpretation of the relationship between clause 8 and the Hague-Visby Rules in the Charterparty.

In addition to the clause 8 issue the Charterers also appealed the Tribunal's decision to allow Owners the defence of "Error of Management" of the vessel if the heating of the bunker tanks had been causative of the explosion.

The decision of the High Court was handed down on the 14 March 2006. Both issues are discussed in further detail in an article by Neil Watson **(neil.watson@simsl.com)** which can be found on the Steamship Mutual website at:

www.simsl.com/Articles/DangStow0406.asp

China - Delivery Under a Straight Bill of Lading and Choice of Law

During the Thirteenth National Seminar on Maritime Adjudication held in September 2004, the judges of China's maritime courts and appeal courts reached a common understanding that the carrier is obliged to deliver cargo under a straight bill of lading against surrender of the original bill of lading. However, such a common understanding is limited to cases where Chinese law is the applicable law.

The Chinese Higher Court of Guangdong Province has recently confirmed that disputes concerning the delivery of cargo without production of a bill of lading are contractual disputes. This raises the question of what view the Chinese courts will take when the applicable law is not Chinese and, in particular, if the applicable law differs from Chinese law or is unclear on the issue.

Wang Jing & Co law firm acted in a recent case in which the choice of law under the bill of lading did, in fact, conflict with Chinese law. This case is discussed by Sue Watkins **(sue.watkins@simsl.com)** and Wang Jing & Co law firm in a joint article prepared for the Steamship Mutual website. The article also contrasts the decision in that case with the current approach of English law to the question of delivery of cargo without production of a straight bill of lading:

www.simsl.com/Articles/Guangzhou0406.asp

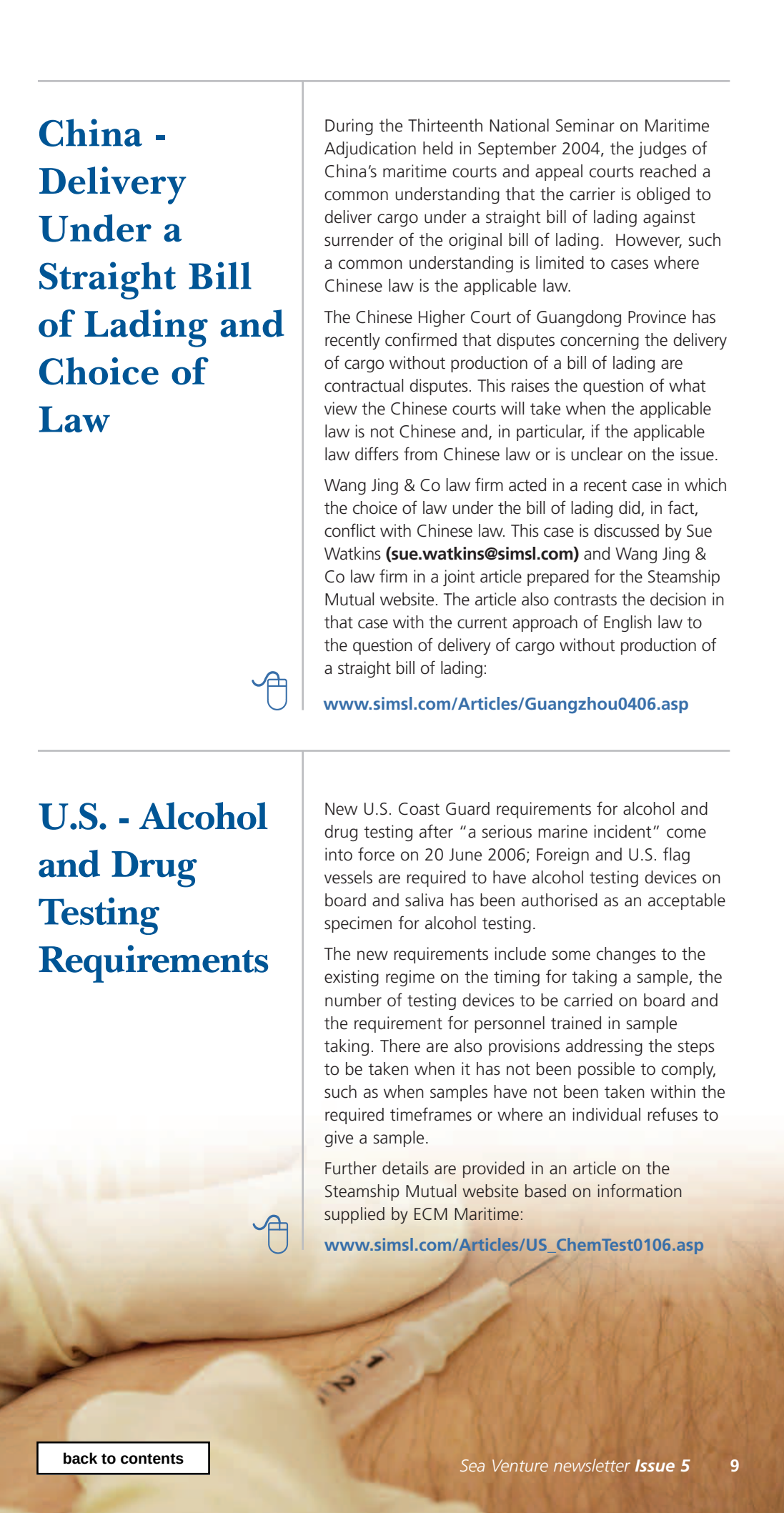
U.S. - Alcohol and Drug Testing Requirements

New U.S. Coast Guard requirements for alcohol and drug testing after "a serious marine incident" come into force on 20 June 2006; Foreign and U.S. flag vessels are required to have alcohol testing devices on board and saliva has been authorised as an acceptable specimen for alcohol testing.

The new requirements include some changes to the existing regime on the timing for taking a sample, the number of testing devices to be carried on board and the requirement for personnel trained in sample taking. There are also provisions addressing the steps to be taken when it has not been possible to comply, such as when samples have not been taken within the required timeframes or where an individual refuses to give a sample.

Further details are provided in an article on the Steamship Mutual website based on information supplied by ECM Maritime:

www.simsl.com/Articles/US_ChemTest0106.asp



The Practical v Effective Cause of Loss and the Inter Club Agreement

The recent decision in *Kamilla Hans-Peter Eckhoff KG v. A.C. Oerssleff's ETFT A/B, "The Kamilla",* is a reminder of the approach that the English courts have adopted when dealing with disputes concerning the application of the Inter-Club Agreement (ICA) to cargo claims.

In *"The Kamilla",* although unseaworthiness of the vessel resulted in approximately 1% of the cargo being damaged, the entire cargo was rejected. Owners argued that this scale of loss was not within the reasonable contemplation of the parties and as such, the loss was not caused by unseaworthiness. Owners said that the loss should have been regarded as a shortage claim, for which Charterers would have been, at the very least under the ICA, equally responsible.

Should the ICA be employed as a form of "rough and ready justice" or should issues of practical or effective causation be taken into account when applying the ICA formula to settle cargo claims? Abigail Cooles **(abigail.cooles@simsl.com)** reviews this and earlier decisions in relation to the ICA in an article on the Steamship Mutual website at

www.simsl.com/Articles/Kamilla0406.asp

Bird Flu - Contractual Implications

Although the H5N1 (bird flu) virus has been largely confined to the Far East countries of Vietnam, Indonesia and Thailand to date and human cases remain rare, scientists fear the virus has the potential to affect humans on a pandemic scale. If this happens, the impact on the worldwide shipping industry should not be underestimated.

Shipping contracts in use today do not contain any specific provisions dealing with bird flu. However, certain existing clauses, particularly in charterparties, may assist should problems occur.

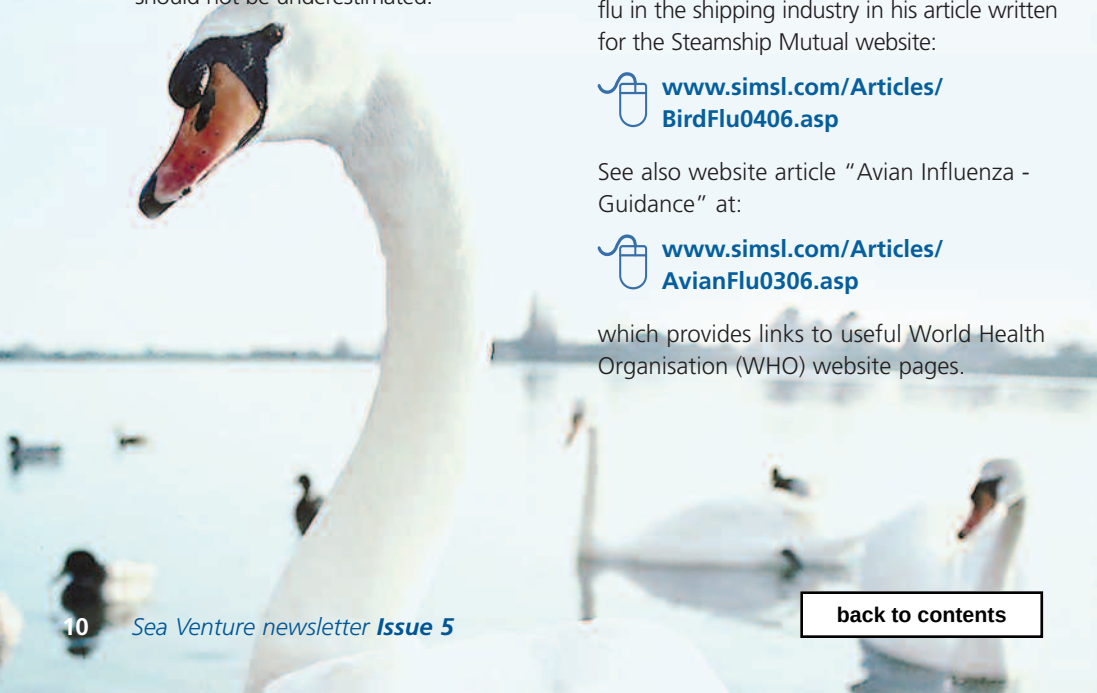
Duncan Howard **(duncan.howard@simsl.com)** considers the contractual implications of bird flu in the shipping industry in his article written for the Steamship Mutual website:

www.simsl.com/Articles/BirdFlu0406.asp

See also website article "Avian Influenza - Guidance" at:

www.simsl.com/Articles/AvianFlu0306.asp

which provides links to useful World Health Organisation (WHO) website pages.



Nominal Arbitration Awards - Beware Cost Penalties

"The refusal to allow lightering and loss of time was a consequence of port authorities security concerns..."

A recent award of costs in a London Arbitration serves as a warning to potential litigants of the financial consequences of pursuing claims of limited merit.

The case concerned Owners' claim for $64,121.86 as the final balance of account due under a NYPE time charter, part of which related to deductions for alleged off hire at a discharge port. The vessel had been required to have an arrival draught of 9.75m on an even keel and declared so by the master. However, the harbour authorities found the draught to be 10.05m and that the vessel had a "serious" hog. The vessel was ordered out to the anchorage for "security reasons". Subsequently, some 3 days and 20 hours later the vessel returned to the lightering berth, lightered to 9.58m and proceeded to the main silo berth to complete discharge. Charterers deducted hire for this period pursuant to clause 15; they had been denied the full working of the vessel as a consequence of the master's negligence in miscalculating the cargo that could be loaded and this constituted a " …default of crew, officers or Owners.....".

The Owners argued that regardless of the vessel's draught on first arriving at the lightering berth it would have been necessary to lighten the vessel before proceeding to the main silo, and the vessel was in any event always capable of performing the service then required by Charterers - to lighten.

The tribunal did not agree. The refusal to allow lightering and loss of time was a consequence of port authorities security concerns caused by one or a combination of the vessel 's excess draught, uneven keel, or hogged condition, which were attributable to the "default of the crew" in failing to calculate correctly the ship's hydrostatic condition . The deduction of hire was justified save that Charterers had miscalculated the loss of time by US$1,021.57. This sum, plus a shortfall of US$335.31 on an undisputed sum paid during the hearing, and interest was awarded to Owners.

Although Owners were the recovering party their claim for hire deducted had substantially failed. Therefore, the tribunal penalised Owners by ordering that they should bear their own costs in full plus 75% of Charterers' recoverable costs, as well as 75% of the tribunal's costs. No doubt Owners' costs were significantly in excess of the sum they recovered. This case serves as yet another reminder that costs liabilities should be factored into the decision whether or not to litigate.

Article by Ian Freeman **(ian.freeman@simsl.com)**

U.S. Ports - Electronic Submission of Advance Information - eNOA and APIS

The U.S. Coast Guard and Customs and Border Protection (CBP) require vessels to submit information for safety and security purposes and for the enforcement of U.S. immigration, import, and export laws, prior to arrival in a U.S. port or place. Notice of Arrival provisions require information about vessel and voyage, International Ship Security Certificate (ISSC), Cargo (general description), crew, non-crew and passengers and Dangerous Cargo to be submitted.

Since 6 June 2005 all vessels calling at U.S. ports have been required to submit notice of arrival information in electronic format.

When?
The electronic notice of arrival (eNOA) and other required information must be submitted as follows:

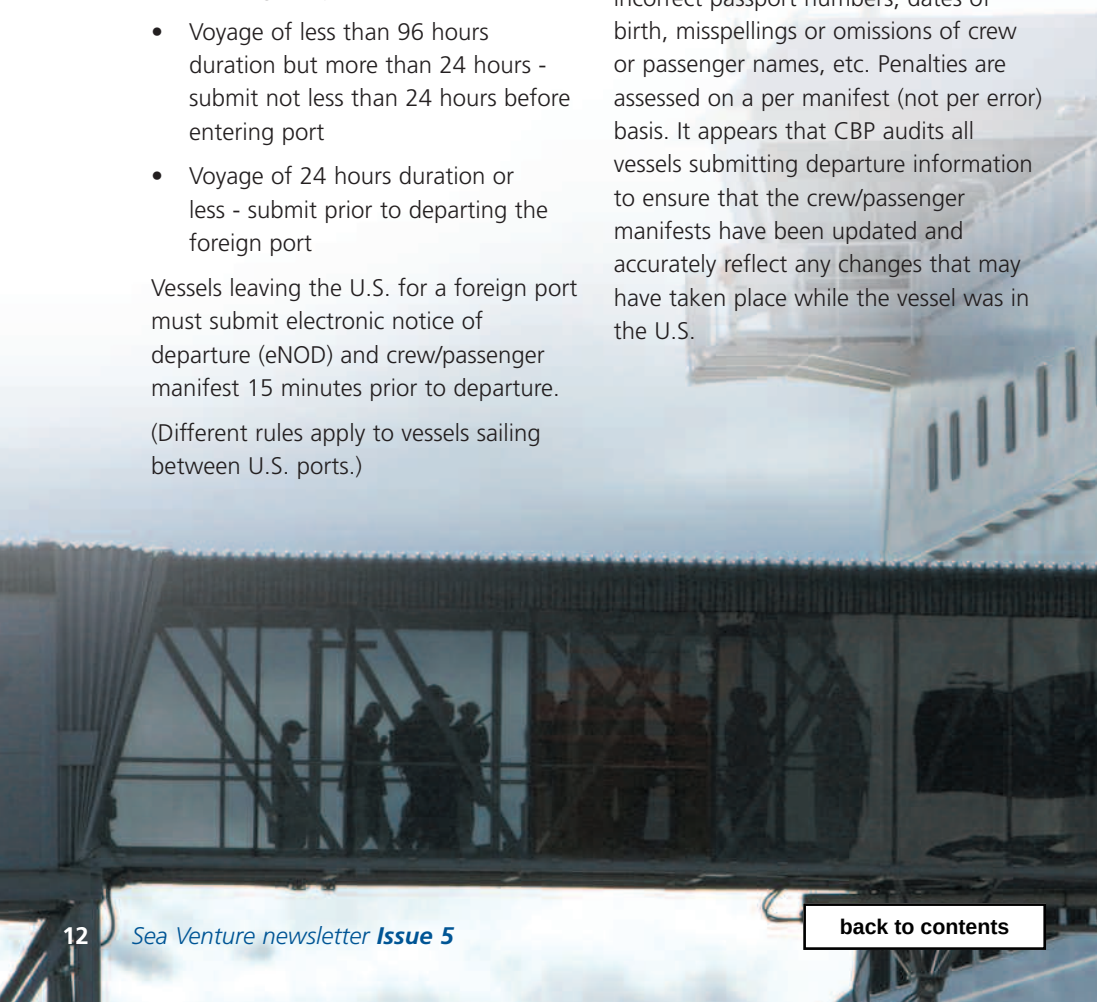
- Voyage of 96 hours duration or more - submit at least 96 hours before entering the port of destination
- Voyage of less than 96 hours duration but more than 24 hours - submit not less than 24 hours before entering port
- Voyage of 24 hours duration or less - submit prior to departing the foreign port

Vessels leaving the U.S. for a foreign port must submit electronic notice of departure (eNOD) and crew/passenger manifest 15 minutes prior to departure.

(Different rules apply to vessels sailing between U.S. ports.)

How?
Since January 2005 carriers have been able to satisfy the notification requirements of both the Coast Guard and CBP by the submission of one eNOA to the National Vessel Movement Center (NVMC). However, the detailed advance notification of cargo under the Automated Manifest Requirements must still be made separately to the CBP.

Passenger and Crew Information
Regulations dealing specifically with the passenger and crew information to be submitted with the eNOA, the Advanced Passenger Information System (APIS), became effective for cargo vessels in June 2005 and passenger vessels in October 2005. Since October 2005 CBP have been issuing penalties for omissions and errors in crew and/or passenger manifests submitted as part of eNOA/D. Errors can include, but are not limited to, incorrect passport numbers, dates of birth, misspellings or omissions of crew or passenger names, etc. Penalties are assessed on a per manifest (not per error) basis. It appears that CBP audits all vessels submitting departure information to ensure that the crew/passenger manifests have been updated and accurately reflect any changes that may have taken place while the vessel was in the U.S.



Penalties & Bonds

Penalties can be imposed for violations of the regulations. These penalties amount to US$5,000 for the first violation, and $10,000 for each subsequent infringement. Seizure and forfeiture are also possible consequences but are generally only likely in limited circumstances. In order to secure the payment of any penalties that may be imposed, the carrier must establish an international carrier bond (ICB). The carrier for these purposes is the entity responsible for providing the vessel's crew.

Members who have a valid and current type 3 ICB, which is used as part of the Automated Manifest System filing requirements, should not need to obtain a new bond as the type 3 ICB may be deemed to be acceptable for APIS purposes. However, this should be confirmed with the relevant Area Port Director. If Members do not have a valid ICB they should request from the Area Port Director, in the port that they use most frequently, details of the amount of bond that will be required.

Article by Paul Brewer **(paul.brewer@simsl.com)** and Naomi Cohen **(naomi.cohen@simsl.com).**

Further detail on APIS and the ICB can be found in Club Circular B.349 of January 2006:

www.simsl.com/Publications/Circulars/2006/B439.asp

There are several Steamship Mutual website articles on the subject of eNOA and advance information requirements at U.S. Ports. These can be found in the Ports section at:

www.simsl.com/Articles/Contents/P_Contents.asp#Ports

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The "Doric Pride" - Outcome Of Owners' Appeal

The original Commercial Court decision in the *"Doric Pride"* was discussed in Sea Venture issue 3. The dispute related to whether time lost waiting for inspection by the U.S. Coast Guard under a trip time charter should be for Owners' or Charterers' account. The Commercial Court decided in favour of Charterers for reasons which were met with a measure of criticism at the time. The Court of Appeal has now upheld the decision. The reasoning behind that decision, as well as the contractual implications for Owners, is considered in an article written by Sacha Patel **(sacha.patel@simsl.com)** the full text of which can be found at:

www.simsl.com/Articles/DoricAppeal0406.asp

STOPIA 2006 and TOPIA - Developments in Compensation for Oil Pollution Damage

As reported in Sea Venture issue 4 *("Developments in the CLC/Fund Conventions")*, following the IOPC Fund Assembly meeting in October 2005, the question of sharing the burden of compensation for oil pollution liabilities was further discussed. To this end, a number of meetings took place between the International Group, the Fund Secretariat and OCIMF in order to find an acceptable mechanism to give effect to the offer made by shipowners that the overall cost of claims be shared equally with oil receivers. In addition, there were regular consultations with ICS and Intertanko to ensure that the content of any new agreements was acceptable to as wide a cross-section of the shipowning industry as possible.

These discussions resulted in two new draft agreements:

- STOPIA 2006 (Small Tanker Oil Pollution Indemnification Agreement 2006); and
- TOPIA (Tanker Oil Pollution Indemnification Agreement).

The terms of the new agreements are explained in greater detail in an article written by Colin Williams **(colin.williams@simsl.com)** for the Steamship Mutual Website:

www.simsl.com/Articles/STOPIA_TOPIA0406.asp

Ship v Shore Figures

A frequent problem encountered by masters of vessels loading bulk cargoes is whether or not to sign bills of lading presented by shippers or Charterers showing loaded quantities based on shore figures that differ significantly from the vessel's figures. If the master signs or authorises the issue of a bill of lading that is known to contain an incorrect description of the quantity of cargo loaded Club Cover is prejudiced. However, if the master refuses to sign or authorise the issue of a bill of lading containing the shipper's figures, not only will there be commercial pressure from the shipper and possibly charterer to do so but an unreasonable refusal can invite potentially substantial claims for damages.

Article III rule 3 of the Hague/Hague-Visby Rules provides that the carrier or master or agent of the carrier shall issue a bill of lading on the demand of the shipper that shows the quantity or weight of the cargo as furnished by the shipper. This obligation falls away if there are reasonable grounds for suspecting that information to be inaccurate. The difficulty is determining what constitutes reasonable grounds, and what influence the law of the jurisdiction of loading will have. The master is in the front line and often has a difficult, and potentially costly, decision to make. In an article on the Steamship Mutual website at:

www.simsl.com/Articles/LoadFigures0406.asp

Neil Watson **(neil.watson@simsl.com)** discusses these issues and some of the alternatives available to the master.

What Constitutes a Binding Agreement?

The English High Court recently considered the issue of whether an exchange of letters gave rise to a binding agreement under a shipbuilding contract. In *Covington Marine Corporation v Xiamen Shipbuilding Industry* the buyers appealed to the Court following a Tribunal decision.

The Court could only consider the issue if this aspect of the Tribunal decision could be shown to be wrong as a matter of law. An appeal on a finding of fact by the Tribunal would not have been permitted.

Sue Watkins **(sue.watkins@simsl.com)** reviews the Court's findings on the jurisdictional issues, on the question of whether an agreement had been reached and whether the shipbuilder had, in any event, repudiated the contract. Her case report can be found on the Steamship Mutual website at:

www.simsl.com/Articles/Covington0406.asp

Enforcing an Express Jurisdiction Clause

In the recent case of *Horn Linie v (1) Panamericana (2) ACE Seguros* the English High Court was asked to consider (1) whether it had jurisdiction where, despite a exclusive English law and High Court jurisdiction clause in the bill of lading, proceedings had been commenced in Colombia and (2) whether it should grant an anti-suit injunction in respect of the Colombian proceedings.

A cargo of printing machinery shipped from Hamburg to Cartagena was stowed on deck contrary to instructions; The cargo was a total loss. The Colombian consignee and the cargo insurer commenced court proceedings against the Owner's agent in Colombia, ignoring the law and jurisdiction clause in the bill of lading.

In Sea Venture issue 3 the approach of the English Courts to anti-suit injunctions to enforce a jurisdiction clause in the context of court proceedings in Europe was discussed. English Courts are, however, still able to enforce jurisdiction clauses where the foreign court proceedings are outside Europe. The judgment of Mr Justice Morison in this case considers the application of Article 8 of the Rome Convention in determining whether a party can have agreed to English jurisdiction and reviews the principles involved in deciding whether an anti-suit injunction should be granted. These issues are discussed in an article by Janet Ching **(janet.ching@simsl.com)** on the Steamship Mutual website:

www.simsl.com/Articles/Horn0406.asp

Hooked Up - When the Duty to Exercise Due Diligence Bites

The "Happy Ranger" was delivered by the shipbuilder to her owner in mid February 1998. The vessel's maiden voyage involved the carriage of a process vessel weighing 833mt for a gas plant in Saudi Arabia. Unfortunately, when lifting the process vessel the hook on the vessel's aft crane broke. The process vessel was dropped to the ground with resulting damages in excess of US$ 2m.

Not surprisingly cargo interests commenced proceedings alleging a failure to exercise due diligence to make the vessel seaworthy before and at the beginning of the voyage. It was accepted that the hook failed because of a latent defect but the Owner denied responsibly for negligence of the ship, crane or hook manufacturers prior to delivery of the vessel.

An article written for the Steamship Mutual Website by Laura Woodhead **(laura.woodhead@simsl.com)** discusses when the carrier's obligation to exercise due diligence to make the vessel seaworthy commences:

www.simsl.com/Articles/HappyRanger0406.asp

Three Men in a Tub - What Constitutes a Vessel under the Jones Act?

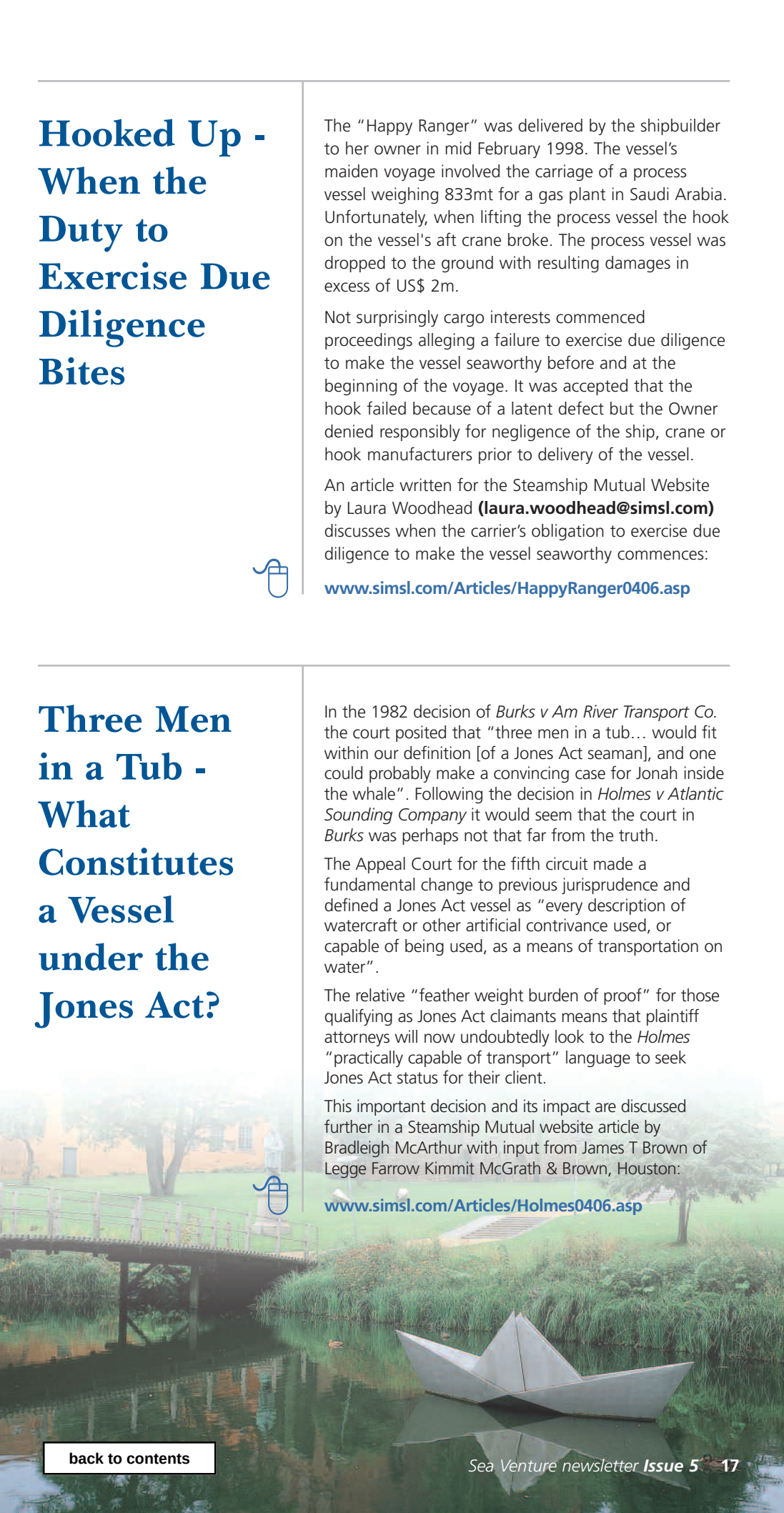
In the 1982 decision of *Burks v Am River Transport Co.* the court posited that "three men in a tub… would fit within our definition [of a Jones Act seaman], and one could probably make a convincing case for Jonah inside the whale". Following the decision in *Holmes v Atlantic Sounding Company* it would seem that the court in *Burks* was perhaps not that far from the truth.

The Appeal Court for the fifth circuit made a fundamental change to previous jurisprudence and defined a Jones Act vessel as "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water".

The relative "feather weight burden of proof" for those qualifying as Jones Act claimants means that plaintiff attorneys will now undoubtedly look to the *Holmes* "practically capable of transport" language to seek Jones Act status for their client.

This important decision and its impact are discussed further in a Steamship Mutual website article by Bradleigh McArthur with input from James T Brown of Legge Farrow Kimmit McGrath & Brown, Houston:

www.simsl.com/Articles/Holmes0406.asp



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Ballast Water Management

New Requirements in Brazil
A new regulation in Brazil imposes requirements for ballasting within territorial waters and for recording these operations. Vessels are obliged to carry out exchange of ballast water at least 200 nautical miles from the coast and in waters which are no less than 200 metres deep. The exchange is mandatory for all vessels engaging in commercial navigation between distinct hydrographic basins and/or when the vessel is navigating between maritime and fluvial ports.

Violation of the requirements can result in the maritime authorities instituting administrative proceedings and taking steps to detain the vessel or to prohibit entry into port or terminal. There are also substantial fines of upto US$ 23 million for failure to comply.

The new regulation is discussed in further detail in an article written for the Steamship Mutual website by Luis Ongay **(luis.ongay@simsl.com)**. The article can be found at:

www.simsl.com/Articles/BrazilBallast0406.asp

image courtesy of GloBallast

Changes in California and Washington
Since 22 March 2006 vessels operating within the Pacific Coast Region of California have had to comply with new management and reporting requirements. Earlier regulations affected only vessels arriving at Californian ports from a distance of more than 200 nautical miles from the coast. Further details of the new regime can be found on the Steamship Mutual website at:

www.simsl.com/Articles/California_Ballast0404.asp

Ballast water exchange is currently agreed to be the most effective treatment option for ballast water. There are, however, circumstances in which exchange cannot be carried out without exposing the vessel and crew to danger. Research into alternative methods of treatment has yet to be completed. Until then, most port states with ballast water treatment requirements accept exchange as an effective treatment method but also provide an exemption where conditions make this unsafe.

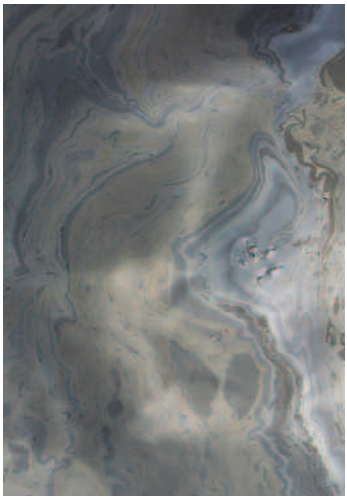
Nonetheless, vessels calling at Washington ports after 1July 2007 will no longer be able to rely on the safety exemption; an alternative treatment method must be available to cover situations where exchange is unsafe. A report on the proposed alternative method must be submitted to the Washington Department of Fish and Wildlife by 1 July 2006. Further information is available at:

www.simsl.com/Articles/Washington_Ballast.asp

Other articles by Naomi Cohen **(naomi.cohen@simsl.com)** on ballast water management requirements both in the U.S and internationally can be found in the Pollution Articles section of the Steamship Mutual website at:

www.simsl.com/Articles/Contents/P_Contents.asp#Pollution

Illegal Oily Waste Discharges



Investigation and prosecution of oily waste offences continues in the United States and other jurisdictions. This issue remains a focus for many Port States and the Steamship Mutual website has featured several articles on this subject in recent months:

- **USCG - MARPOL Annex I Enforcement Policy**
  In January 2006 the U.S. Coast Guard published a policy letter, "Guidance for the Examination of MARPOL Annex I During Port State Control Examinations", which establishes new inspection and testing procedures for USCG Port State Control Officers. The letter itself together with an executive summary by Daniel J. Fitzgerald of Freehill Hogan & Mahar, LLP can be found at:

  www.simsl.com/Articles/USCG_MARPOLI_Policy0206.asp

- **Port States CIC on MARPOL Annex I Requirements**
  The Tokyo and Paris MOUs and Viña del Mare Agreement conducted, in parallel, a Concentrated Inspection Campaign (CIC) on MARPOL Annex I requirements from February to April 2006. The purpose of the CIC was to verify whether oil filtering equipment was installed, maintained and operated appropriately and whether pollution prevention arrangements and procedures were properly followed on board ship. Inspections focused mainly on the equipment located in the engine room. Past inspections revealed illegal by-passes of the oil filtering system, illegal overboard connections from sludge and many instances were the oil record books were not properly kept.

  www.simsl.com/Articles/ParisTokyoCIC0106.asp

- **Industry Guidance on the Use of Oily Water Separators**
  Several of the major international shipping industry organisations have collaborated to produce some basic guidance for management and crew on the use of oily water separators. The guidance emphasises the vital importance of strict adherence to International Maritime Organization (IMO) requirements.

  A link to the ICS/ISF website, from where the six-page guidance leaflet can be downloaded free of charge, is at:

  www.simsl.com/Articles/OWSGuide0306.asp

Club circular B.432 of June 2005 on the subject of Oily Water Separators can be found at:

www.simsl.com/Publications/Circulars/2005/B432.asp

Are You Ready For Competition?

In February 2006, the European Commission (the Commission) announced that it was undertaking a detailed study on how the specialist shipping sector operates. This latest announcement follows on from the Commission's statement at the end of 2005 that European competition rules will be actively applied to that sector.

Many have been alarmed that the Commission is turning its attention to specialist shipping operators when the sector has, in the past, enjoyed relative anonymity in terms of competition regulation.

However the Commission's statements over the last few months present the sector with a unique opportunity on two fronts:

- The Commission's study affords the sector the opportunity to explain how specialist shipping operates. If the Commission has a proper understanding of the sector from the outset, it will be in a better position to apply the competition rules effectively and fairly. In the long term this can only benefit the sector.
- As the Commission is turning its focus towards the sector, individual pools and ship operators should be considering whether or not their activities and practices breach the competition rules, in the absence of the benefit of a block exemption similar to that which is in place for liner shipping consortia. This means taking steps now to ensure compliance with the competition rules. Some will argue that this is difficult without guidelines from the Commission on how to apply these rules to the sector. However liner shipping and other transport sectors already give guidance on how the rules can be applied. Taking steps to ensure compliance now and, if necessary, to lobby in favour of a block exemption, should mean that the Commission does not spring any surprises on pool managers and specialist operators in the future.

A more detailed article on this subject by Marjorie Holmes and Lesley Davey of Richards Butler's Competition and EU department can be found on the Steamship Mutual website at:

www.simsl.com/Articles/Competition0406.asp

The Cost of Deviation to Interim Ports

Oil tanker charterparties now commonly incorporate an additional clause allowing Charterers to direct the vessel to additional load or discharge ports and make provision for payment to Owners for costs incurred. Such clauses usually provide that load and discharge costs are to be paid at cost, with additional steaming time incurred for the deviation to the interim port. However, they often do not make clear whether time spent in port should count at the laytime or demurrage rate. As there are usually other clauses in the charterparty which contain provisions dealing with the commencement, running of and exceptions to laytime, unless the clauses are carefully drafted having regard to the interrelationship with other relevant clauses in the charterparty, the consequences can be severe when a Charterer exercises an option under such a clause.

Stephen Mackin, partner at Eversheds discusses drafting such clauses and their interpretation in an article he has prepared for the Steamship Mutual website:

www.simsl.com/Articles/InterimPort0406.asp

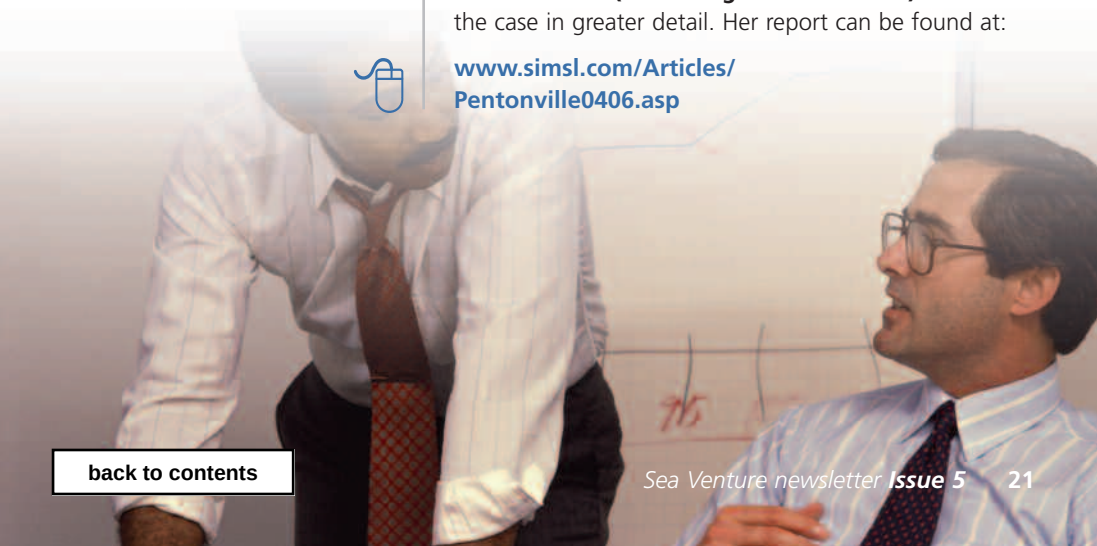
Cargo Shortfall - Who Bears the Loss?

When a vessel is ordered to sail with a shortfall of cargo are Owners entitled to claim deadfreight?

During loading operations it became apparent that if the vessel continued to load cargo she would miss high tide and, owing to her size, if a full cargo was loaded the vessel would then have to wait a further 3 weeks for the next spring tide. Therefore, the vessel was ordered to sail by the "terminal/port authority" with a shortfall of 15,845 tonnes and Owners claimed US$134,682 deadfreight. However, on behalf of whom was the order to sail given, and did this constitute an order of the charters or, rather, an instruction by a terminal or port that did not want the berth occupied for a prolonged period of time?

These are the issues that recently came before the English Commercial Court on appeal from arbitration in *Pentonville Shipping Ltd v Transfield Shipping Inc.* In a report prepared for the Steamship Mutual website Sarah McGuire **(sarah.mcguire@simsl.com)** discusses the case in greater detail. Her report can be found at:

www.simsl.com/Articles/Pentonville0406.asp



Liability of North American Rail Carriers - One Continent, Two Systems

The Canadian Federal Court recently held that under the Canadian legislation a rail carrier was prevented from relying on the benefit of an ocean carrier's himalaya clause to limit liability in the absence of a written agreement to which both claimant and defendant rail carrier were a party.

The case, *Boutique Jacob Inc. v Pantainer Ltd & Others,* concerned a claim by receivers for damage to container cargo as a result of train derailment. This decision is to be contrasted with the position adopted by the United States' Supreme Court in *Norfolk Southern Railway v Kirby*. (That case was reported in Sea Venture issue 3 with further details given in a Steamship Mutual website article at:

www.simsl.com/Articles/kirby0805.asp

The Court was also required to examine the issue of electronic bills of lading and the applicability and enforceability of terms displayed on a company's website; Could parties who deal regularly with each other and use the other's website for electronic data processing purposes and online traffic control claim that they had no knowledge of the standard terms and conditions displayed on that website simply because they had neglected to read them?

David Colford of Canadian law firm Brisset Bishop discusses the case further in an article written for the Steamship Mutual website:

www.simsl.com/Articles/Boutique0406.asp

Recent Publications

Loss Prevention Materials

Minimising Fatigue, Maximising Performance - Video/DVD Training Programme

Many incidents giving rise to claims are attributable to human error. The potential for human error can increase as a result of fatigue induced by busy shipboard schedules. In response to the growing concerns within the industry regarding fatigue the Managers of the Association, in association with Videotel Marine International Limited have produced a training package consisting of a Video/DVD and Work Book that is designed to raise awareness of this important topic.

Members are entitled to a 20% discount from the standard price for either purchase or rental of this programme. Further details concerning pricing and how to place orders can be obtained from: Videotel Marine International, 84 Newman Street, London W1T 3EU, Tel: +44 0207 299 1800, Fax: +44 0207 299 1818,

www.videotel.co.uk

When contacting Videotel, and in order to obtain the appropriate discount, Members should confirm their Membership with the Association, with the names of entered vessels for which the programme may be required. Further details may also be obtained from the Managers' London Representatives.

Articles Published on the Steamship Mutual Website

- MARPOL Annex VI - Fuel Quality Requirements
  www.simsl.com/Articles/MarpolVI_Fuel0406.asp
- Wood Packaging Material Regulations - Enforcement in North America and Mexico
  www.simsl.com/Articles/US_WoodPack0306.asp
- Piracy off Somali Coast
  www.simsl.com/Articles/SomaliaGuidance1105.asp
- Arbitration v Mediation - a Comparison
  www.simsl.com/Articles/ArbMedComp0306.asp
- Anti-Dumping Protocol comes into Force
  www.simsl.com/Articles/AntiDump0306.asp
- Pollution Fines In Turkey
  www.simsl.com/Articles/Pollution_Turkey0104.asp
- Spain - Container Security Requirements
  www.simsl.com/Articles/Spain_Container Security0106.asp
- India - Entry Requirements
  www.simsl.com/Articles/India_Entry0106.asp
- Amended USCG Marine Casualties Reporting Requirements
  www.simsl.com/Articles/US_ReportEnv Harm0106.asp

STEAMSHIP MUTUAL

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