



The Swedish Club

# Sanctions: Red flags and risk

**At war: Working with charterers when trading in an excluded area**

**Container losses: The Swedish Club identifies the catalysts**

# Contents

## Leader

Adapting to the new reality .....3

## Loss Prevention

Lack of cooperation lead to grounding .....4

Loss prevention webinar series moves apace.....6

Container losses: The Swedish Club identifies the catalysts .....8

Engine room fires: Dangerous practices revealed .....11

## Features

The IMO global sulphur content cap - one year one .....12

Thinking outside the box.....16

    Using technology to deliver loss prevention services worldwide .....17

    Avoiding legal tripwires .....19

    Sharing experience - online .....21

## Underwriting

At war: Working with charterers when trading in an excluded area .....24

## Legal

Sanctions: Red flags and risk .....27

Binding contracts and The Leonidas .....30

## P&I

The COVID-19 pandemic and claims .....32

## MEMBER SURVEY

2020 member satisfaction survey .....35

## ESG

Moving forward with the Club's sustainability agenda .....36

## Club Information

Notice board.....37

Staff news .....38

Calendar/Quiz .....38



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The Swedish Club

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# Adapting to the new reality

At the time of writing this leader, the COVID-19 pandemic continues to affect our lives in all respects. From various stages of lockdown we have seen societies and businesses opening gradually, but then setbacks occur, and we need to be diligent. At the Club we are continuing to adapt to this reality and respond to the challenges caused by the virus - at the same time our ambition to deliver quality service to members will not diminish. I sincerely hope you are all in good health and stay safe.

Whilst the Club's staff have adapted to their new working environment quite easily, our thoughts go to the seafarers and their families who are being adversely impacted by the pandemic. Prolonging employment contracts results in both mental and physical stress. Absence from family life for more than a year, coupled with the uncertainty as to when the return home can be made,

is detrimental to anyone's wellbeing. The P&I community has worked hard with the International Maritime Organization (IMO), the International Chamber of Shipping, and other industry bodies to find universal solutions. At the end of the day, this untenable situation also affects the safe working of our merchant fleet.

This year The Swedish Club celebrates 40 years in Greece. The office in Piraeus was the first office to be established by the Club outside Sweden. Forward-seeing leaders saw the need and opportunity to create a permanent presence in the Greek market. The Club's 'all-in-one' offer with hands-on claims services represented a new, valuable approach. I am happy to note that shipping companies joining at that time continue to support us as members of the Club. Relationships and trust are cornerstones in our business model and these values are reciprocated by the Greek market.

Many interesting topics and articles are featured in this edition of Triton, from loss prevention features to a special supplement celebrating the 40th anniversary of the Piraeus office. There are never two Tritons alike, and this one is no exception. I hope you enjoy reading it and please stay safe. 🙏

**Lars Rhodin**  
Managing Director

# Safety scenario

## Lack of cooperation lead to grounding



By Joakim Enström, Loss Prevention Officer

Each month the Club's Loss Prevention team issues a new safety scenario to assist members in their efforts to comply with international safety regulations and to follow best practice. Visit Swedish Club OnLine (SCOL) for more examples.

### CASE STUDY

A 1,000 TEU container vessel departed its berth after loading. During the loading there had been some delay and the gantry cranes had stopped operating because of strong winds, so the Master was eager to depart. The navigation officer had prepared the bridge before departure.

On the bridge was the Master, pilot, lookout and Chief Officer. A tug assisted the vessel during departure. The Master gave the pilot the pilot card and offered him some coffee. After this the Master gave the pilot the conn.

The pilot was steering from the port side bridge wing. The berth had a heading of 317° and there were strong WSW winds at Beaufort scale 9. The vessel was moored at the end of the berth. The fairway leaving the port had a heading of 230°.

The pilot's plan was for the vessel to go astern and swing to port and clear the end of the berth and then follow the fairway. However, he did not explain the plan to the Master and the Master did not enquire.

The Master ordered all lines released. The bow started to fall off quicker than the stern as the wind pushed on the vessel's port side, off the berth. The pilot ordered half astern and the plan was to use the bow thruster to let the vessel's bow swing past the end of the berth and to position the vessel to sail out in the fairway. At this time the vessel had a course of 310°.

A tug assisted with pushing the vessel on the starboard side. The vessel was now moving astern at 2 knots and towards the opposite side of the fairway, the south side. There were several buoys marking the fairway. The closest buoy was on the starboard quarter about 50 metres away. The wind continued to push the vessel from the

*The vessel continued its movement astern and hit the buoy on the starboard quarter. The entire buoy was dragged underneath the vessel and damaged the propeller, rudder and rudder stock.*

portside causing the vessel to drift in a SE direction, further into the fairway. The stern thruster was set full to starboard to assist the vessel in turning to port. The vessel started to slowly come around with a heading of 291°, but was still drifting SE, towards the buoy.

The Second Officer on the stern warned the Chief Officer over the UHF that the

## Discussion

When discussing this case please consider that the actions taken at the time made sense for all involved. Do not only judge, but also ask why you think these actions were taken and could this happen on your vessel?

### Ask yourself:

1. What were the immediate causes of this accident?
2. Is there a risk that this kind of accident could happen on our vessel?
3. How could this accident have been prevented?
4. Do we have a pre-departure meeting with all the people involved in the departure regarding what the plan is and what to expect? (The issues in this case apply for arrival as well.)
5. Do we let the pilot manoeuvre the vessel?
6. If we do, is the plan for departure discussed with the pilot and entire bridge team?
7. What are the environmental limits for departure?
8. How do we ensure that if a tug is ordered that it is sufficient for the prevailing winds?
9. Has everyone in the bridge team received MRM training?
10. Do we use closed-loop communication on the bridge?
11. What sections of our SMS would have been breached if any?
12. Does our SMS address these risks?
13. How could we improve our SMS to address these issues?
14. What do you think was the root cause of this accident?
15. Is there any kind of training that we should do that addresses these issues?

buoy was only 30 metres away on the starboard quarter. The vessel now had a heading of 320° which presented a 90° angle towards the fairway. The Chief Officer informed the pilot and Master but neither of them acknowledged or took any action.

The Second Officer then informed the Chief Officer that the buoy was only 10 metres away and the pilot ordered half ahead on the engines and for some

reason the stern thruster was stopped. At the same time, the pilot received a job-related mobile phone call which he answered. The vessel continued its movement astern and hit the buoy on the starboard quarter. The entire buoy was dragged underneath the vessel and damaged the propeller, rudder and rudder stock. The damage caused the vessel to lose its steering and the Master was forced to stop the main engine. This caused the vessel to start

drifting even quicker in a SE direction towards shallow waters.

The pilot suggested that the anchor be dropped. This was delayed as the Second Officer had to cross from the stern to the bow of the vessel to reach the port anchor. When he reached the bow the bosun tried to drop the anchor, but it became entangled and it took a minute before it was released. At the same time the vessel ran aground. 🚨

# Loss prevention webinar

## series moves apace

The second of The Swedish Club's series of loss prevention webinars, entitled Proactive and Reliable Loss Prevention, took place on 20 September 2020. Introduced by Lars Malm, Director Strategic Business Development & Client Relations, from the newly created Studio Mutual in Gothenburg, this session aimed to provide an in depth look at the hard work going on behind the scenes to deliver safety initiatives to both members and the shipping community at large.

### The value of being the 'All-in-One Club'

Lars Malm explained that the Club's position as the All-in-One pioneer was extremely relevant to its loss prevention activities: "This leading position has enabled us to develop comprehensive and broad-based experience and expertise of complex claims spanning the many classes of insurance provided by the Club. From this experience we have obtained very comprehensive

**"Our loss prevention initiatives are designed to add value to our members in their efforts to reduce the number of claims."**

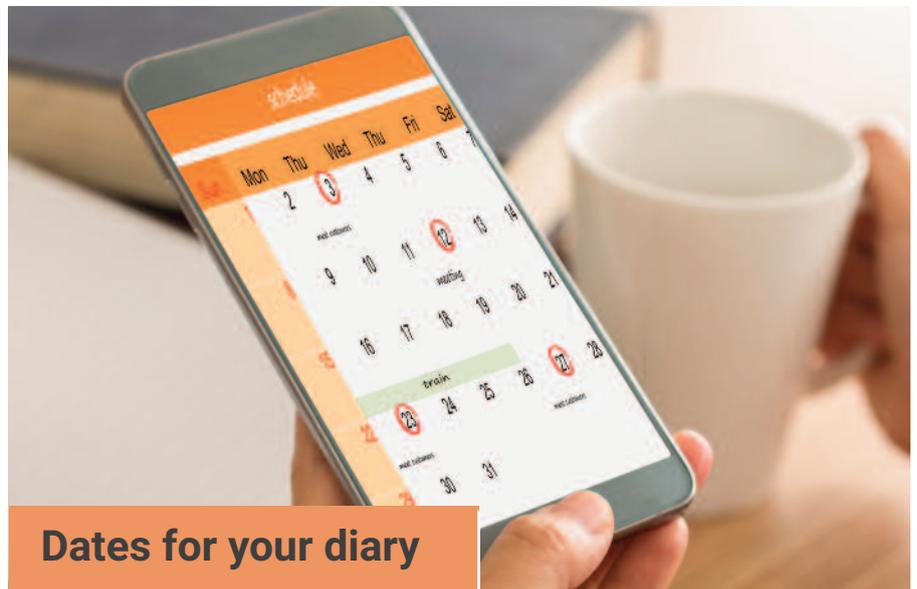
statistics that help us to make the connections needed to offer practical and realistic loss prevention advice."

He pointed out, however, that loss prevention wasn't just about statistics. "We like to make a difference," he said. "Our loss prevention initiatives are designed to add value to our members in their efforts to reduce the number of

claims. They are easy to implement in daily operations and focus on providing concrete hands on advice."

### An impressive audience

With more than 400 visitors signing up for the webinar, the Club was pleased to see so many taking a keen interest in loss prevention support.



### Dates for your diary

#### January 2021

Navigational claims and how to avoid major pitfalls

#### February 2021

How to avoid cargo claims

#### May 2021

Engine failures: Causes and advice

In addition the team will be launching a number of new initiatives by webinar in the coming months. Watch your inbox, or visit <https://www.swedishclub.com/training/webinars/>

**“If our efforts prevent only one serious casualty, then that is money well spent.”**

### Helping you to make a difference

The main loss prevention issues fall into four areas, explained Lars: Navigational claims, cargo claims, people claims and machinery damage. There has been a clear decrease in the number of these claims over the past years. “Of course, we cannot take full credit for this,” he said. “There have, over time, been many external factors. However, if our efforts prevent only one serious casualty, then that is money well spent. We want to help you make a difference.”

### Wide ranging support

He outlined the training that the Club delivers: Emergency Response Training (ERT), Maritime Resource Management (MRM) and the ever popular Marine Insurance Course (MIC). This activity is then coupled with loss prevention initiatives such as the enhanced pre-employment medical examination (PEME), the Swedish Club Operational Review (SCORE) benchmarking, Trade Enabling Loss Prevention (TELP) and the Monthly Safety Scenario (MSS). And of course the Club continues to produce high quality Member Alerts, publications and guidance

### New initiatives

Joakim Enström, Loss Prevention Officer, then talked in more detail about a number of these initiatives, including the Club’s latest developments in delivering loss prevention advice.

### The importance of MRM

Lorraine Hager, newly appointed Loss Prevention and Marketing Advisor then took the opportunity to speak enthusiastically about MRM, reinforcing the point that safety critical industries simply cannot afford to make errors, and reminding the audience that the biggest contributing factor to accidents is still human error. This emphasises the importance of MRM, she said, because it is about “understanding accidents, so we learn how to prevent them through good decision making”.

Following the webinar the loss prevention team fielded a wide range of questions including queries about PEMEs, the new online training package, MRM training, TELP, publications and the COVID-19 pandemic.

The webinar is available to view, and following the event a number of new questions have been submitted. Visit <https://www.swedishclub.com/training/webinars/> to experience the webinar yourself. 📺

## Diving Deep into Hull & Machinery Claims

The Swedish Club partnered with the Turkish Shipowner’s Association Center of Excellence on 13 November 2020, to deliver a webinar to its members with the theme: Diving Deep into Hull & Machinery Claims.

Sharing their knowledge and expertise were Peter Stålberg, Senior Technical Advisor at the Club, and Johan Kahlmeter, Area Manager, Team Gothenburg. They provided an in-depth analysis of machinery claims and discussed the Club’s loss prevention approach.



# Container losses: The Swedish Club identifies the catalysts

“Unlike other Club loss prevention guides, in the case of container loss, the statistics that we have analysed fail to tell the whole story.”

With a maritime history going back millennia, it is easy to forget that the container industry was established less than 70 years ago, and so is perceived by many as the modern face of shipping. Yet despite the sector being well regulated and highly regarded, containers are still lost overboard. The Swedish Club has published a new loss prevention report, *Container focus: Preventing the loss of containers at sea*, providing an overview of statistics, an insight into specific cases, and with the help of experts, delivering hands-on advice for preventing such losses.

Even a small number of containers lost overboard can pose a serious danger to shipping and the environment, says Lars A. Malm, Director, Strategic Business Development & Client Relations at the Club. "In *Container focus* we have used

case studies to highlight common and avoidable errors and provided simple to follow advice in order to prevent them. However, unlike other of the Club's loss prevention guides, in the case of container loss, the statistics that we have analysed fail to tell the whole story.

**Catalysts**

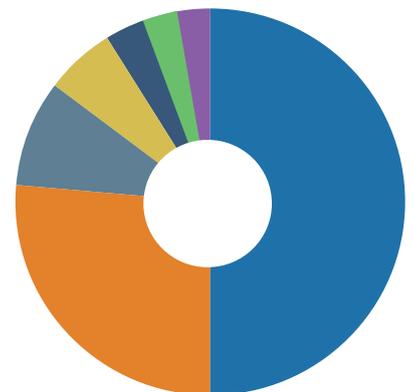
"One catalyst for such losses is known to be misdeclared cargo. Sadly, the nature of these losses makes it difficult to translate incidents into data, and more importantly, identify the parties that cause such damage to the industry.

"A second catalyst we have seen is heavy weather. The excessive forces that are applied to the structure of a vessel in extreme conditions can lay bare errors that have been made when loading the cargo on board," he adds.

**Immediate causes of container loss – number of claims**

*P&I cargo, container, 2015-2019*  
 Cost =>USD 5,000 – uncapped  
 As per 14/8/2020

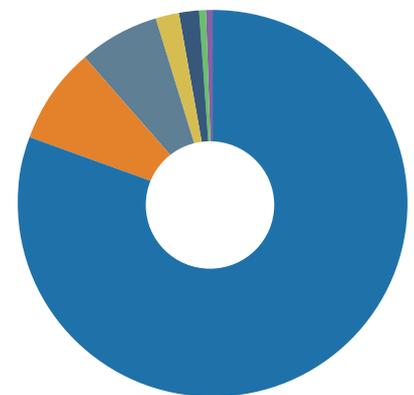
● Heavy weather	50.0%
● Insufficient lashing/securing by shipper	26.5%
● Insufficient lashing/securing by stevedore	8.8%
● Insufficient lashing/securing, ship side	5.9%
● Poor tally	3.0%
● Loading heavy containers on top of light	2.9%
● Poor stowage	2.9%



**Immediate causes of container loss – total cost**

*P&I cargo, container, 2015-2019*  
 Cost =>USD 5,000 – uncapped  
 As per 14/8/2020

● Heavy weather	80.8%
● Insufficient lashing/securing by stevedore	8.0%
● Insufficient lashing/securing by shipper	6.6%
● Insufficient lashing/securing, ship side	2.0%
● Poor tally	1.6%
● Loading heavy containers on top of light	0.5%
● Poor stowage	0.5%



## LOSS PREVENTION

"The immediate cause may seem to be poor navigation but in fact often the root cause lays in port."

The Club's statistics show heavy weather to be the major immediate cause of container losses, responsible for half the claims and more than 80% of the costs - despite the widespread availability of sophisticated weather routing systems.

### A costly business

Many of the issues raised in *Container focus* occur time and time again, despite the fact that lost containers can be costly. Whilst just over 4% of the Club's claims are for containers lost overboard, these account for over 10% of costs. Claims caused by containers being lost overboard generate an average claims cost of USD 135,000 which is more than two and a half times higher than the average cost of claims from other causes.

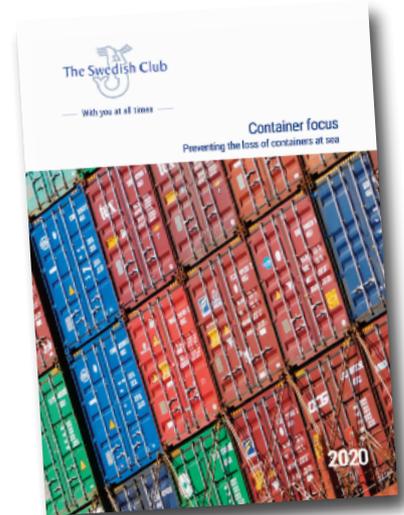
### A lack of training

"When we look at many cases, we must question the quality of training received by all involved in the logistics chain," says Lars A. Malm. "Reluctance by crews to reduce speed or alter course to avoid heavy weather; poorly stuffed containers; containers not secured in accordance with the Cargo Securing Manual (CSM); lashing strengths not checked against the loading computer's lashing module; excessive GM – all these factors can be avoided with good seamanship and proper training."

### Practical guidance

*Container focus* aims to provide those on board and onshore with the practical help they need to avoid many of the most common errors that lead to incidents. The publication explores planning, loading and stability, lashings, and provides advice on dealing with heavy weather. Case studies show the extent of the problems that can be revealed by heavy weather. 🌪️

The publication has been written with support from SOLIS, Macgregor and SEC Bremen. To obtain your copy of *Container focus: Preventing the loss of containers at sea*, please visit <https://www.swedishclub.com/films-and-publications/publications/loss-prevention-and-brochures/>



## The Cargo Incident Notification System



Problems with incorrectly declared containers are costly for the shipping industry and have been an ongoing issue for many years. The Swedish Club supports the Cargo Incident Notification System (CINS), an important industry initiative which was launched in September 2011. The purpose of the CINS is to increase safety in the supply chain, reduce the number of cargo incidents on board vessels and publicise the risks caused by certain cargoes and/or packing failures.

# Engine room fires: Dangerous practices revealed



**Pepe Bolaños**  
Gibraltar Strait Surveyors

It is well known that the combination of lube oil or fuel oil mist and hot surfaces makes the likelihood of a fire in the engine room high. Further investigation has, however, shown an entirely unexpected cause of engine room fires – the frequent use of air conditioning filter mats in the turbocharger filters.

A large number of fires are known to be produced in the turbochargers, especially in vessels' machinery spaces during unmanned periods (AUT-MS vessels). Turbochargers are one of the most advanced technological components on board a vessel – the high-speed rotation of the turbines can

easily reach 1.5 times the speed of sound.

Yet during periodical safety inspections and audits it is becoming increasingly common to find that engineers are using the ordinary blankets used in the air conditioning stations as filtering material for main and auxiliary turbochargers, despite the fact that this is a clear violation of *SOLAS Chapter II-2 Part B - Prevention of Fire and Explosion Regulation 4 - Probability of Ignition*.

The general use of these blankets is due to a combination of their very low price, easy availability and the simple fact that

a great majority of seafarers do not seem to appreciate how dangerous it is to replace the original non-combustible filters with this highly combustible material.

The polyester filter mat intended for fresh air in the air conditioning system is flammable and is inappropriate for use as filter mesh for turbocharger due to the vicinity of the hot surface exhaust gas manifold in 2-stroke and 4-stroke engines. The material is very dense, and absorbs oil and fuel vapour, leading to a very similar result to oil leaking into lagging material. The process effectively creates a torch ready to combust at the first opportunity.

**It is becoming increasingly common to find that engineers are using the ordinary blankets used in the air conditioning stations as filtering material for main and auxiliary turbochargers**

In addition, the polyester filter mesh is too dense to be used in a turbocharger. It restricts air intake in the diesel engines, so that in the first instance it creates inadequate combustion which increases the emission of greenhouse gases. Sulphur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), particulate matter (PM) and carbon dioxide (CO<sub>2</sub>) are emitted into the atmosphere as a direct result of this incomplete combustion, leading to an increase in the specific fuel consumption. Incomplete combustion itself can lead to fires.

It is essential that this practice is highlighted, and that shipowners, managers and engineers on board are reminded that the only suitable air filters are approved by the OEM, Fire Class F1, and self-extinguishing material according to DIN 53 438. 🇪🇺





Andrew Bates,  
Head of FD&D  
Team Asia

In this article Andrew Bates looks at the experience of the industry following the introduction of the 0.5% sulphur content limit for marine fuel oils and, later, Dr Rene Macahig provides some valuable insights into quality and performance issues.

# The IMO global sulphur content cap -one year on





**Dr Rene Angelo Macahig,**  
Consulting Scientist,  
Andrew Moore & Associates, Singapore

*A consulting scientist with AMA based in Singapore, Rene is an expert in chemical analyses and instrumentation, and has given advice in multiple fuel quality disputes.*

Maritime shipping is still the most carbon-efficient form of transporting goods, far more so than road or air transport. The introduction of the sulphur content cap by the IMO under MARPOL Annex VI in January 2020 further enhanced the benefits global shipping has for the environment comparative to other modes of transport.

On 1 January 2020 the new global sulphur limit for marine fuels became 0.5% by mass, reducing it from the previous 3.5%. To broadly illustrate the difference this makes, a ship burning 37 tons of 3.5% fuel would emit 2.2 tons of sulphur oxide (SO<sub>x</sub>), whereas with 0.5% fuel the emission is reduced to just 0.36 tons.

Regulating and reducing shipping emissions is central to the climate change agenda of greenhouse gas reduction. Cleaner marine fuels produce cleaner coastal air and reduce ecological damage, in particular from acid rain.

## A smooth transition

The implementation of the new sulphur limit went a lot smoother than many in the shipping industry had predicted. In terms of availability, producers such as ExxonMobil, Total, Shell and BP were marketing very low 0.5% sulphur fuel oil (VLSFO) well in advance of January 2020 and there was a stockpiling of such fuels at strategic points around the world, such as Singapore. Furthermore, the softening of global crude prices in December and January helped to ensure a smooth transition.

## Compliance

In terms of compliance, reports present a relatively positive image. For instance, statistical data from the Tokyo MOU Asia-Pacific shows that so far this year only five detentions were reported in connection with the sulphur content of fuel used on board, and these five were all reported before the end of April 2020. Statistical information published online by the Paris MOU shows that there were no violations reported concerning Annex VI.

## The COVID-19 effect

The COVID-19 pandemic in 2020 has undoubtedly impacted on the ability of port state control (PSC) authorities to conduct physical inspections of vessels. For instance it had been anticipated that PSC officers would board vessels using portable sulphur content analysers, conduct documentation checks, and physically check SO<sub>x</sub> emissions in exhausts using sniffers, as well as test samples taken directly from the fuel oil storage and supply system of a ship with increased frequency. Such 'in use' samples are separate from the statutory MARPOL sample taken at the time of the stem. Not surprisingly, there is anecdotal evidence that the ability of PSC officers to implement such measures in the climate of COVID-19 has been reduced.

## Variances in testing

MARPOL also contains provisions relating to a 95% 'confidence limit', to consider the variances associated with testing of 'in use' fuel oil samples. This means that when such samples are taken by PSC and analysed for compliance a sulphur content of up to 0.53% must be accepted as compliant. This helps ensure that ship operators are not unfairly penalised for marginal excesses due to factors beyond their control. Bunker suppliers are not, however, accorded any confidence limit and are required to stay at or below 0.5%.

In the months following the introduction of the sulphur cap the Club saw instances of the BDNs declaring the fuel to be less than 0.5% whereas subsequent testing produced results above it (usually marginal increases of 0.02% or 0.03%). In all cases the fuel was eventually

## FEATURE

consumed without any unwelcome consequences. That takes place within a regulatory framework where the BDN is the primary evidence of compliance with MARPOL. However the risk will always remain that on some future occasion PSC will test the MARPOL sample retained on board and that may not produce results reflective of the BDN.

### The FONAR

Most ship owners will already be familiar the Fuel Oil Non-Availability Report - the FONAR. Part of the scheme of Annex VI (see regulation 18) is that when facing enforcement action a ship owner should be able to fully document efforts to achieve compliance. This information is embodied in the FONAR, and it is to be presented to the flag state and the port of destination in advance of a call.

In the early stages of 2020, the Club observed some cases of shipowners having to chase a time charterer (who is contractually responsible for sourcing and supplying compliant fuel) for updates on the bunkering situation in anticipation of the possibility of filing a FONAR. It caused frustration for some members and is an example of

the tension that can exist between commercial realities and statutory (MARPOL) compliance.

### Pricing

IMO 2020 was expected to push up bunkering costs and disrupt markets but investment in desulphurisation plant and blending by refiners, combined with severe demand destruction from COVID-19, has meant that prices for low sulphur products have only risen modestly compared to high sulphur fuel oil. The premium for VLSFO had fallen from over USD 300 per ton in January to about USD 70 per ton by mid-June. Weaker global trade because of the pandemic has reduced demand for marine fuels generally.

### Quality and usage issues

In the run-up to the 0.5% sulphur cap it was anticipated that the characteristics of VLSFOs could vary considerably, given the wide range of residue streams and cutter stocks expected to be used as blend components. Fuel characteristics such as density and viscosity were expected to vary widely and, indeed, compliant bunkers customarily ordered as RMG 380 grade

currently exhibits a broad spread of viscosity values.

### Stability

Marine fuel oils are complex mixtures consisting of a wide spectrum of different molecules, from simple hydrocarbons to large complex asphaltenes. A fuel oil mixture can be considered as a multi-phase system in which the asphaltene, aromatic, and saturate fractions are kept in balance, meaning it is 'stable' fuel.

Thermal stresses or changes in the chemical properties can lead to instability, and may ultimately result in flocculation (by which fine particulates

# Prices for low sulphur products have only risen modestly compared to high sulphur fuel oil.



are caused to clump together) and deposition of asphaltenes. In fuel oil these asphaltenes are generally stabilised by aromatic components. However, the increased use of paraffinic blend components to meet the more stringent sulphur requirement for new compliant fuels can affect the stability of the resulting blend leading to a higher risk of breakdown and sludging. High levels of sludge formation can cause filtration and separator issues in fuel systems, hence ISO 8217 includes a specification requirement for fuel stability, termed as Total Sediment Potential (TSP). It is the responsibility of the fuel supplier to provide stable fuels compliant with ISO 8217 requirements.

There are many alleged contamination cases where the bunkers are found to be within specification for the routine ISO 8217 parameters but, when put into use, machinery problems occurred. Typically the most common problem is filters clogging and needing replacement along with certain other parts. The result is not so much material or engine failure but a more troublesome experience for the crew in running fuel through the ship's system, and the purchase of expensive fuel additives and spare parts.

### **Viscosity and pour point**

Low sulphur fuel can have viscosities near or at the lower limits of allowed viscosity. As more distillates enter the VLSFO blend pool, fuel viscosity has fallen, a trend that has been widely reported by most testing houses. Whilst the lower viscosity values may not necessarily be off specification, there are nonetheless important operational implications to be considered. For example, it is essential that the viscosity at the fuel injectors remains within the limits prescribed by the engine maker. When the viscosity is too low, it may lead to inadequate dynamic lubrication of fuel injection equipment and poor distribution of the spray pattern in the combustion space.

Some VLSFOs may exhibit relatively higher pour points which would mean that higher transfer temperatures, typically 10°C above the pour point, are required to facilitate pumping. At the same time, the crew would need to

closely monitor the viscosity of the fuel such that it does not fall below the minimum set by the engine makers. A combination of low viscosity and high pour point, though not necessarily off specification, could present operational challenge.

### **Cylinder lubrication**

Prior to the introduction of the 0.5% sulphur cap engine parameters were set up to use residual fuels with an expectation that fuel sulphur content would typically be in the range of 2.0 to 3.5%. With the use of VLSFOs, however, the neutralising demand on the engine lubricants and cylinder oil becomes much reduced. The base number (BN) of lubrication oil should be carefully considered for extended operation with VLSFOs and should be referred to the engine maker. Too low or too high a BN leads to operational issues. Shipowners are advised to engage with their lubricant suppliers and follow original equipment manufacturer (OEM) guidelines to ensure that the appropriate lubricants are being used with respect to low-sulphur fuels.

### **Sampling**

Fuel quality disputes will often involve testing, and hence the provenance and integrity of the samples to be tested is and remains of great importance. Aside from dispute resolution, suitably drawn and witnessed representative samples of the fuel also form the basis for compliance verification under MARPOL. Properly drawn representative samples are particularly important for potentially unstable fuels, as the sediments might settle to the bottom of the cubitainer during drip sampling.

### **A team effort**

The introduction of the IMO 0.5% sulphur cap under MARPOL has been considerably more seamless than many observers had anticipated. The environmental and health benefits from the reduction of SOx emissions are clear and it is perhaps fair to say that IMO 2020 has been a success, notwithstanding the adversities of COVID-19 restrictions. Industry participants will need to remain aware of the various operational aspects of

VLSFO usage and the characteristics of the fuel, as described above. Crew members will need to be particularly mindful of the correct procedures for storage, handling and operation. For their part, time charterers will need to source fuel where blend components conform to the ISO 8217 standard. In short, in order to avoid the sorts of problems described in this article, the resulting fuel must be a homogenous blend, and able to withstand the expected forces through normal on-board use and storage. 🇦🇪



**It is perhaps fair to say that IMO 2020 has been a success, notwithstanding the adversities of COVID-19 restrictions.**



THINKING



OUTSIDE



THE BOX



# Using technology to deliver loss prevention services worldwide

Interview

**Lars A. Malm**

Director, Strategic Business Development & Client Relations

Across the spectrum of loss prevention, The Swedish Club has long been a trailblazer, from pioneering the Maritime Resource Management (MRM) concept in the 1990s through to the development of the new Trade Enabling Loss Prevention (TELP) tool in 2019.

The COVID-19 pandemic has presented immense challenges to businesses around the world – and for The Swedish Club, the upheavals of 2020 have added a new dynamic.

## Continuing to talk

“Whatever we did before, we now have to think totally differently,” says Lars A. Malm, Strategic Business Development & Client Relations Director at the Club. “Early in the spring we realised that our priority must be to stay in touch with our existing business partners and members, and also to reach out to new connections. It was clear that we would have to rely on online solutions in order to do that.

“Business goes on, and when we launch new initiatives, it is essential that our communications are not only adapted, but even tailored to online channels, so that we can stay fully engaged with our business colleagues.”

## The importance of TELP

In fact, the introduction of TELP – trialled in 2019, launched fully in 2020 – was timely, enabling the Club and its correspondents to work together to keep members up to date on all aspects of COVID-19, including individual port rules and restrictions.

“To have that amazing distribution channel for COVID-19 information, and other important information we wanted to communicate directly, and quickly, was so valuable,” says Lars. “It is a good example of an initiative absolutely tailor-made to distribution via an online platform.



“Printed materials are important too, but my expectation going forward is that these will be more of a complement in relation to our online interaction with members and others.”

## Webinar programme

The Swedish Club responded very quickly to the pandemic and the impact of lockdown and travel restrictions. One of the first steps by the Loss Prevention team was to set up a programme of webinars running through to June 2021.

The first focused on TELP, and how it could support members, followed in September (2020) by an overview of the loss prevention services available to members and the shipping community. “These were really well attended – we were pleased by the number of people who signed up and logged on,” says Lars.

Next on the agenda was a sanctions webinar held jointly with Hill Dickinson in

November. Future webinars will focus on topics including cargo claims and navigational claims. Full details can be found at: [www.swedishclub.com/training/webinars/](http://www.swedishclub.com/training/webinars/)

In all of these, quality is the watchword. "We have all seen companies churning out webinars about this and that, and we have all watched webinars where we walk away no more enlightened," says Lars. "But whether online or in person, if we can't fill that meeting with quality and deliver something of value, it is pointless. If we are talking to people, we want to have a message – something concrete that actually benefits them."

### New online platform

Work has also started on a new business-to-business platform which will replace SCOL (Swedish Club OnLine). The upgraded facility will enable members and business partners to carry out online transactions with the Club in real time; it will also allow for the introduction of more loss prevention information, including benchmarking information around vessel positioning, trading patterns and differentials in claims performance.

"There will be more advanced cargo claims analysis and benchmarking possibilities, and other loss prevention areas will also be enhanced," says Lars. "We are very focused on this new business-to-business platform, which will be launched before summer 2021."

### Online training

Alongside this work, the Loss Prevention team has been launching online training modules, creating a handbook on contractual issues and setting up a project around crew wellbeing. This last topic is particularly relevant given that seafarers have suffered a huge impact from COVID-19, with many forced to stay on board far longer than their contracts.

"We want to take a comprehensive approach to wellbeing – recognising that eating healthily and taking regular exercise reduce the risk of encountering mental illness," says Lars. "That is very logical and everyone knows and understands it, but in these times it is possibly easier said than done. As a Club, we want to help look after our members' most important resource, the seafarers." The format of this project has yet to be finalised, but an important aspect will be user-friendly online delivery.

### Future impact

"Of course, we all look forward to the time when enough people have been successfully vaccinated against COVID - 19 and we can travel again. However, the pandemic has likely had a longer-term impact, as companies consider the environmental impact of travel and the efficiency aspects of the way we conduct business. We have all learned and understood that a lot of business can be done online via video meetings and online presentations," says Lars.

"That is the 'new normal' – we think that in the future, physical contact and large conferences of several hundred people will be complemented with online contact, allowing us to channel our information to a wider audience.

"When we have run a seminar in Hamburg or elsewhere in the past, maybe we would greet 100 people. Now, when we plan a loss prevention webinar, we expect to have many hundreds of people signing up – so our reach has increased. Online is actually more accessible for many people."

### Personal relationships

Having said that, Lars is swift to emphasise that personal relationships still really matter. "We need to be clever and sustainable in how we maintain those relationships. Digital media and online communication are going to be more important than ever before, but physical meetings will continue to be extremely important." 🙌

"Whatever we did before, we now have to think totally differently"

Lars A. Malm

# Avoiding legal tripwires



Interview  
**Torbjörn Claesson**  
 Senior Claims Executive,  
 P&I and FD&D  
 Team Gothenburg

Loss prevention is not only about avoiding physical accidents and damage – there are plenty of legal tripwires, too, where the wrong action taken might cause substantial loss. The Swedish Club is leading the way in considering this aspect of loss prevention, the question being: “Is there a legal angle to minimising the risks that the members face?”

To this end, the Club is currently compiling a new handbook on contractual issues, with the first section due to be launched next year.

“As ever, we focus on issues which we know are problematic from the view of the membership,” says Torbjörn Claesson, Senior Claims Executive. “We have taken what we think are the most common problems and put together

guidance to deal with them. Of course, the Club is always available to our members who can come direct to us to discuss issues, but we hope this new publication will provide a slightly more informed basis on which to start discussions.”

## Bills of Lading

The Club possesses a significant database of information relating to contractual issues. Drawing on this, and other research, the first topic to be covered will be Bills of Lading (Bs/L). As Torbjörn says, the B/L is an everyday document that can present a good deal of legal risk. For example, wrongly completed, a B/L could lead to a member taking on liabilities they should not be responsible for.

# “As a P&I Club, we try to deal with issues in as practical a way as we can”

Torbjörn Claesson

“The B/L is such a short contract – only two pages – but a lot of law goes with it which isn’t written into the contract,” he says. “We want to help members in dealing with the various issues which arise from these contracts. For example, having to change details mid-voyage because the vessel is going to a different port – that requires the involvement of a fair number of people, including members’ offices and also people on board, chiefly the Master.”

The Club is compiling a set of articles to help those involved to understand the detail of a B/L – not just what they have to do, but also explaining the legalities behind that.

## Delivery through SCOL

“This, we hope, will help the members and the Master to carry out their duties in conjunction with the P&I Club. Importantly, this guidance will be available in hard copy and also electronic format. The plan is to make it accessible via SCOL, so copies can go on ships and also be provided in members’ offices.”

All of this means that Club and member will literally be on the same page – with access to exactly the same information, it will be easy to refer to specific paragraphs and points when discussing any issue.

## An everyday issue

“This should make what can be complex issues a little bit less tricky,” says Torbjörn. “The B/L is something which our members come across in their daily operations in a way they would not with some of the other P&I issues, such as wreck removal. By having a handbook, we can guide members and they can more easily see if there should be alarm bells raised – hopefully putting a stop to any issue before it grows.”

## Potential pitfalls

For such a short document, the B/L comes with a large amount of variations and potential pitfalls. What do you need to write on the B/L if you carry deck cargo? How does endorsement of the B/L work? Who is the party responsible for carrying the cargo - owner or charterer?

“Unlike some other areas of the law where we have practitioner books – for charterparties, for example – any guidance on Bs/L tends to be more theoretical. As a P&I Club, we try to deal with issues in as practical a way as we can, without losing the legal theory behind it,” explains Torbjörn.

“It is possible that you get a B/L wrong and that a loss will result. It is also possible that if you get it wholly wrong you fall outside the limits of the P&I cover. One important aspect of this publication is to help members to do what is correct in issuing a B/L, thereby ensuring they remain within the scope of what we do cover and do not fall into an exclusion area, so preserving their right to seek compensation where appropriate.”

## Considering blockchain

The focus will be on traditional paper Bs/L initially, but the Club has a clear eye on global initiatives trialling blockchain and other digital Bs/L. “As time goes by, we will see what new issues come up with these blockchain Bs/L” says Torbjörn. “A lot of the principles will remain the same but no doubt the new technology will bring some separate issues to be dealt with.”



# Sharing experience - online

Interview  
**Joakim Enström**  
 Loss Prevention Officer

Before 2020, who would have questioned the concept of inviting a group of company employees together in one place to carry out training? COVID -19 has changed all of that and encouraged companies to consider alternative ways of providing personnel with new and refresher training sessions.

## Meeting the challenge

The Swedish Club's Loss Prevention team is currently formulating ideas to meet that challenge. One of the options it is exploring is the development of a training package specifically designed for the training seminars which are held by most companies for their officers every year.

"We feel we could supplement the more traditional officer seminar where everyone meets in one location," says Loss Prevention Officer Joakim Enström. "Our plan is to create materials which are designed to be central to an online seminar, enabling a facilitator to guide participants through the material, and allowing them to discuss the issues raised.

"The shipowner can use the seminar to fit the needs of different groups, perhaps catering for varying time zones," he says. "It gives shipowners more choices. I think it will take some

time before travel becomes normal again – if it ever does – and this is the way forward."

## Reaching shipowners

The Loss Prevention team had already been formulating plans to develop an online training programme before COVID-19 struck. As Joakim says, the pandemic has highlighted the importance and relevance of the concept. "I can probably travel twice a year to teach officer seminars – this new concept will allow all of our members to download the package and take advantage of our experience through case studies and other material."

"We can help the shipowner by providing interesting topics for them to focus on," says Joakim. "We aim to make it as easy as possible for ship owners to teach officers about safety, highlighting issues that we think are relevant, based on our own claims statistics and serious cases we have handled, i.e. things that have happened in real life and that could happen to anyone. We handle claims every day, and this will be another way to share our experience with people."

The seminar material will be designed to encourage fruitful discussions including ways of resolving the issues raised. "It is all about increasing safety and teaching

people about risks that we know about, but they possibly don't recognise."

Connectivity is always an issue with online training. In addition to developing the online version, the Club plans to create a package of printed material that can also be sent out to vessels. "Perhaps the captain can be the facilitator and discuss these cases on board the vessel with crew, which will help with crew bonding and working together," says Joakim.

### Awareness of risks

As he points out, serious accidents on board are not common – and that means seafarers might not keep the risks at the forefront of their minds. "It is important that they are reminded that accidents can happen – and the more you are prepared, the better you will be at handling any situation."

Having been at sea for ten years himself, he understands the pressures. "It is a very tough job. I try to identify with the crew. It is so easy for us being on land and reading about these accidents. The people on board try to make the right decision but perhaps they had an upsetting phone call or are homesick or had an argument with someone else on board. Sometimes they are just very tired. Yes, with the correct management you can get the rest, but you never get a real break and the psychological toll can be hard."

Of course, the ideal is that people meet physically and that can be more motivating, he says. "But in this way, instead of reaching five members a year, we can reach 200 – and they can use this material multiple times, so it is much more efficient. It is nice to meet up, but perhaps that should be seen as the add-on option."

The Swedish Club loss prevention online seminars are planned to be trialled by selected Club members before an official launch early in 2021. 🇸🇪

## Loss prevention news

The Loss Prevention team has teamed up with CWA in London to enhance the cargo advice provided to members. The plan is to provide written case studies and statistics, to help members handling specific cargoes identified as high-risk, either because of a high frequency of claims or because associated claims are very expensive, or both.

"We are working on this now, ready for launch in 2021," says Joakim Enström. "We want to provide hands-on advice for the Master and shipowner that can be used in daily operations. We see various issue recurring and want to provide cargo advice that has been written by experts, as it is quite complicated."

Focus areas will include grains, petroleum cargoes, vegetable oils, specific hazardous chemicals, coal and steel, as well as an operational guide for cargo hold cleaning.

"The more you are prepared, the better you will be at handling any situation" **Joakim Enström**



# The Swedish Club

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# At war: Working with charterers when trading in an excluded area

When operating in high risk areas owners can sometimes come under pressure to allow charterers to place additional war risk cover on their behalf. We explore some of the pitfalls that can befall the unwary.



**Tord Nilson,**  
Director Underwriting,  
Reinsurance & Risk Control



**Jakob Osvald,**  
Senior Manager  
Underwriting



**Anna Fjaervoll,**  
Underwriting & Reinsurance  
Coordinator

## Why war cover?

In an increasingly complex world, for many ship operators, the importance of war insurance has sadly become a fact of life. War perils - with their high risk of cumulative damage, liability and loss of time - are understandably excluded from all Marine and P&I policies. The insurance industry would simply be unable to survive during an armed conflict of some substance, if such an exclusion was not in place. The accumulated risk would be too great. In addition, of course, a key element of the concept of insurance is cover for damages caused by sudden and accidental occurrences, something that cannot be said about acts of war.

War insurance provides cover on a named peril basis, as opposed to all-risk policies which cover every peril unless excluded. The Club's war insurance product provides cover to members for worldwide trading but with certain areas of higher

risk excluded from cover. The current high risk areas are published on the Club's website. The Club, like the majority of insurance companies offering war insurance, follows the decisions taken by the Joint War Committee at Lloyds to introduce, amend or remove areas.

## Pressure from charterers

For high risk areas, most of the time war insurance can be reinstated for a time limited call with changed conditions and at an additional war risk premium (AWRP). The AWRP is paid for by the entity that decides that the vessel will trade to the excluded area. There are cases where this will be the owners themselves, but in most cases it will be paid for by the charterers of the vessel.

Problems are sometimes encountered when a charterer, also operating a fleet owned by themselves in the excluded area, rejects the AWRP that the shipowner

has been quoted by his war insurance provider. This will be on the grounds that the cost is higher, or the terms less favorable, than the charterers have seen from other owners or have seen for their own fleet. The charterers will therefore demand that the shipowner achieves a lower AWRP from his war insurance provider.

The attacks against shipping in the Persian/Arabian Gulf which have taken place in recent years have led to higher AWRP being charged for vessels going in and out of the Gulf. With the charterer in many cases bearing the ultimate cost for such voyages, it comes as no surprise that charterers often make efforts to cross-check the level of AWRP charged, or even to seek alternative arrangements to place AWRP war risk cover on behalf of owners, in order to reduce costs for themselves.

The attacks against shipping in the Persian/Arabian Gulf which have taken place in recent years have led to higher for AWRP being charged for vessels going in and out of the Gulf.

For the most part, checking owners' AWRP is sufficient to ensure that the amount that charterers are being asked to pay is competitive in comparison with their own experience and current market levels. In some instances however, the premiums that charterers have been charged differ vastly from the owner's quote. Consequently, the charterers try to force the owners to negotiate certain AWRP levels with their insurer, or even force the owners to place the 'breach voyage' to the high risk area on a separate cover made available by the charterers. Indeed, provisions to this effect are sometimes written into charterparties between owner and charterer. By doing so, charterers will feel in total control of cost and may benefit from returns and commissions.

**Into the unknown**

For owners of a vessel the situation is reversed as there is a loss of control in relation to the insurance of their vessel. Owners take time and care when choosing the insurers of their vessels, and they work to build up a relationship with them. When owners agree to place cover for their breach voyage on a separate policy they have to 'share' the

policy with other assureds. In addition to the charterer of the vessel, it can also include other owners in the same situation. In the event of a claim, the owners will be dealing with insurers they have not chosen themselves and may know nothing about the security behind.

Further to this there are many issues related to placing breach voyages with charterers or elsewhere, and many arguments for owners to resist or consider before doing so.

**Insurable interest**

The concept of insurable interest - the financial interest by the insured entity in the object of insurance - is a cornerstone in any insurance. The charterer does not have an insurable interest in the vessel they insure on behalf of the owner. Furthermore, the charterer may have very different objectives - mostly to do with reducing cost - than the owners. Very little emphasis is put on other aspects such as the insurer's claims handling capabilities and willingness and capability to pay in the event of a claim.



### *Mortgagees*

An owner has an obligation under the loan agreement to advise and to obtain approval from mortgagees on each occasion when the underlying war insurance is suspended, cancelled or placed with alternative underwriters. The war insurer, and in some cases the insurance brokers, have obligations to mortgagees under their letter of undertaking to advise mortgagees of the owners intention to suspend cover. This places both a legal obligation and an administrative burden on all parties and increases the possibilities of errors and oversights which may again leave the owner in breach of his loan agreement.

There is also an additional administrative burden when suspending cover for short periods of time in the Persian/Arabian Gulf. The suspension has to be reported to the insurers as well as the mortgagee(s) for approval on every single occasion. If not done or missed, double insurance would be the result and there could be cover issues as well. With insufficient security for their insurance cover, the owners may also be in breach of the loan agreement for the vessel.

### *Claims disputes*

Needless to say, if a claim occurs immediately following reinstatement of the owners cover it will inevitably lead to a dispute regarding what set of underwriters should respond to the claim and no doubt will take months if not years to litigate before settlement is reached. An example could be a limpet mine attached to the vessel, exploding shortly after reinstatement. When was it attached to the vessel? Needless to say the potential for dispute will escalate if the claim occurs during a period of constant suspensions and reinstatements.

For claims purposes a breach is technically looked upon as the period from port prior to breach until the time to first port after breach. Charterers may offer to cover a vessel for the same period, pre-port and post-port breach, however the owner's insurer would usually suspend insurance for the time within the breach area only and will most likely warrant to know that no

known or reported losses have occurred before they agree to reattach cover. If a claim has occurred during the period of suspension, owners may face problems with the re-attachment and may need to seek alternative risk cover or pay an increase in their annual war risk premium to have cover reinstated with their original insurers, a cost that owners will be unable to recover from charterers.

**The Swedish Club offers war cover on a 'held covered' provision, which means that if there is an error in reporting the breach it is still covered provided that premium is eventually paid.**

### *No insurance or double insurance*

Great care should be taken at all times to avoid the possibilities of operating without insurance or of having double insurance. Often it is not clear when the charterer's cover is deemed to attach and, at the other side of the breach voyage, the owner's war insurance to reattach. This in itself leads to a concerning problem; from what point is the breach cover in place, during what time will the charterers facility insurers be on risk and at which point will the owner's war insurance reattach?

Wherever their insurance is placed, owners require certainty of cover at any given point in time. This includes having a seamless cover between hull policies and war policies to ensure that there are no gaps in the owner's cover. Potential disputes in this respect can occur if the owner's hull and war risk policies are placed on Nordic Plan (NPL) and the cover placed by charterers for the breach is placed on Institute Time Clauses (ITC), and the risk of disputes will of course increase with different

underwriters involved for the various covers.

### ***Errors in administration; insufficient insurance – or no insurance at all***

Vessel values change frequently, and an increase in value of a vessel just prior to a breach may not be communicated properly to insurers by charterers, resulting in under insurance during the breach.

Furthermore, the charterer's cover may be prejudiced due to breach of warranty on their behalf (e.g. if charterers have omitted to declare or provide other vital information to insurers). This would result in no cover afforded to owners for an action or inaction that they have no control over. Owners would need to seek re-compensation directly from the charterer, if allowed within the charterparty.

### ***The importance of being 'held covered'***

The Swedish Club offers war cover on a 'held covered' provision, which means that if there is an error in reporting the breach it could still be covered provided that it is reported without delay and the additional premium is paid. There may not be such provision in a charterer's cover. This is an important issue, for example over a period when the offices of the various parties are closed, and a fixture within a breach area is arranged at the last minute, meaning that the owners are unable to carry out the numerous administrative tasks that are normally handled with their own insurers.

### **At the heart of the issue**

A charterer does not have an insurable interest in the vessel for which they arrange cover. This means that their main interest is to arrange cover at lowest cost available. It must be remembered that which insurer the cover is provided with, and on what terms, is of less interest to charterers – it is not their property or liability that needs to be insured. The contrary is true for an owner. Certainty of cover, terms, and provider of insurance are the most important things when insuring a vessel. 🇸🇪

# Sanctions: Red flags and risk

## Introduction

The global sanctions landscape has changed a great deal in 2020. The impact of sanctions breaking, or even being perceived to have broken sanctions is often severe and may put a company out of business, effectively shutting it out of the financial market. To navigate the quickly changing sanctions landscape and mitigate the risks posed by sanctions breaking requires comprehensive due diligence routines implemented by parties involved in maritime activities.

On 14 May 2020, the Office of Foreign Asset Control (OFAC) in the US issued a Global Maritime Advisory aimed at parties active within the maritime sector, providing detail on the level of due diligence and other compliance activities expected of parties whose business activities run a risk of engaging in trades that may breach US sanctions. The advisory covers, among others, shipowners, operators, charterers, and brokers as well as

**The advisories are relevant reading and a good starting point for all organisations developing a sanctions compliance program, not only for US and UK entities.**

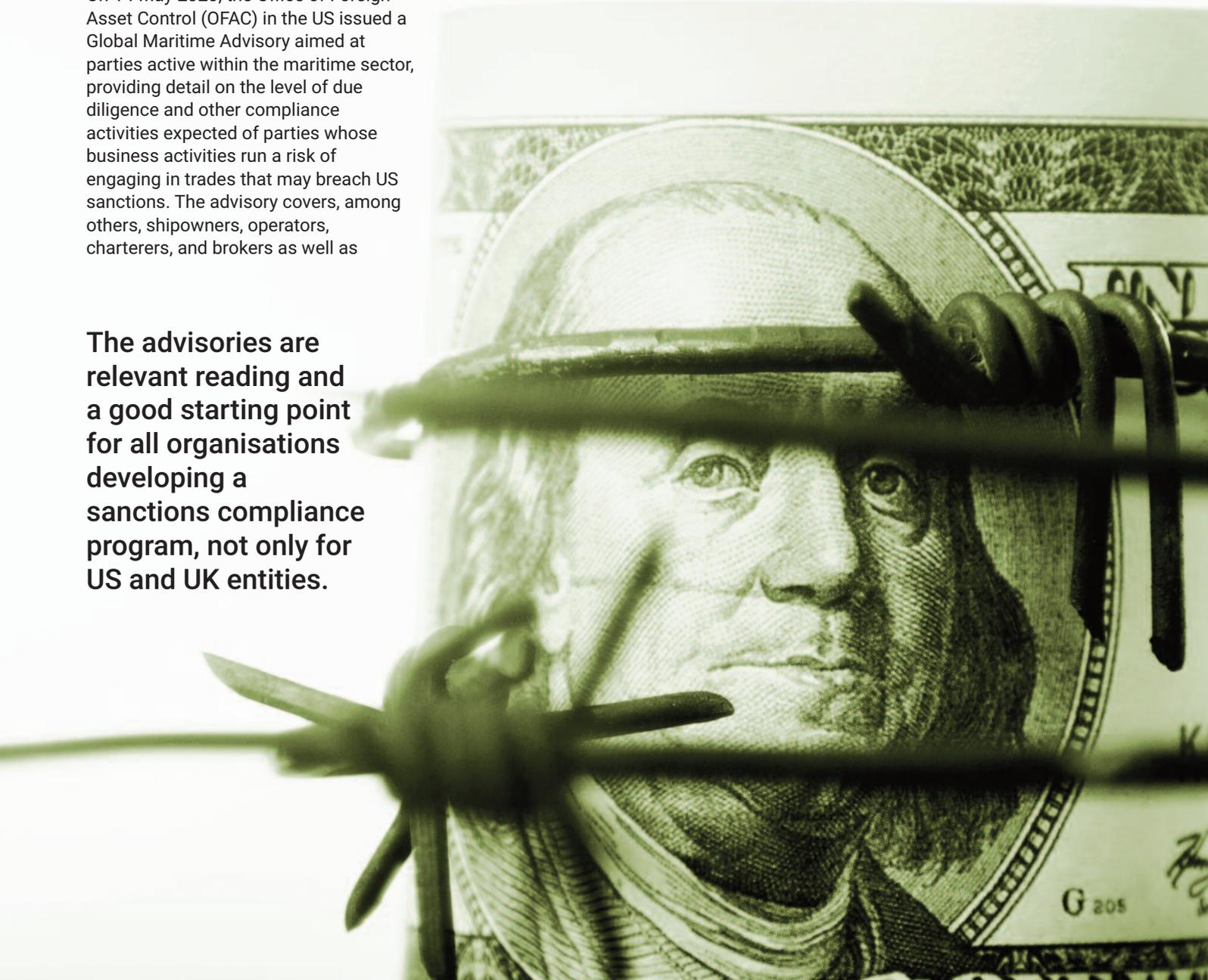
insurers active within the maritime sector. On 27 July 2020, the UK equivalent to OFAC, the Office of Financial Sanctions Implementation, produced a similar advisory setting out the UK's expectations for parties involved in maritime activities. Thus, similar standards are now expected from UK persons and entities.

The significance of these advisories lies in the fact that they represent an attempt by US and UK governments to set out the standards by which the maritime industry will be judged if they are linked to sanctions breaking. As such, the advisories are relevant reading



**Malin Högberg,**  
Corporate Legal Director

and a good starting point for all organisations developing a sanctions compliance program, not only for US and UK entities. 🚩



# Taking a risk-based approach to sanctions compliance



**Leigh T. Hansson,**  
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London and Washington D.C.

*Leigh is a partner in the Global Regulatory Enforcement group and a leading lawyer in Reed Smith's International Trade & National Security team.*

The requirements imposed by US sanctions, even on non-US entities, are immense and complex. Each sanctions program is unique, but in general, non-US entities may be punished for 'significant' or 'material' transactions with individuals and entities on its Specially Designated Nationals (SDN) list. Moreover, transactions utilising the US financial system, that may otherwise be legal, may violate sanctions.

In the wake of increased enforcement against non-US persons in the maritime industry, shipowners and charterers alike must ensure they are taking a risk-based approach to sanctions compliance. Here, we address the potential sanctions risks, as well as practical guidance for compliance and due diligence.

## 'Red flags'

The Office of Foreign Assets Control (OFAC) issued guidance to the maritime industry in May 2020 (<https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20200514>), focusing on deceptive tactics commonly used to evade sanctions, and recommends that the

following 'red flags' be considered in due diligence and incorporated into compliance processes:

**AIS manipulation:** One of OFAC's main concerns is the practice of 'going dark' i.e. disabling a vessel's Automatic Identification Signals (AIS) or 'spoofing' - manipulating AIS to mask a vessel's name, identifying number, or next port of call.

**'Flag hopping':** Sanctions evaders may repeatedly change vessel flags within a short time period, or continue using a country's flag after a vessel has been deregistered.

**Vessel disguise:** Sanctions evaders may physically alter a vessel's identifying marks, such as painting over the vessel's name or IMO number.

**Strange deviations:** When AIS data shows a vessel engaging in indirect routing or unscheduled detours, that may indicate a sanctions violation, particularly if those deviations occur in high risk areas.

**Ship-to-ship (STS) transfers:** Transferring cargo to another ship may

In the wake of increased enforcement against non-US persons in the maritime industry, shipowners and charterers alike must ensure they are taking a risk-based approach to sanctions compliance.

indicate that parties are trying to conceal sanctioned cargoes, entities, or destinations. STS transfers that take place in high risk areas or at night are of special concern.

**Falsified paperwork:** Sanctions evaders commonly falsify cargo and vessel documents, like bills of lading, certificates of origin, invoices, insurance certificates and last ports of call, to conceal goods from a sanctioned country or the presence of an SDN.

**Opacity, shifting ownership:** One practice is to use shell companies, with multiple levels of ownership, to disguise the Ultimate Beneficial Owner (UBO). Another tactic is to transfer vessels between companies controlled by the same UBO. Sanctions evaders may change the company ownership or management, or the vessel's management company, for International Safety Management Code purposes. If there is no discernable legitimate purpose for such changes, there may be a sanctions concern.

### Risk-based compliance programs

Because having a robust sanctions compliance program is a significant mitigating factor in enforcement actions, owners and charterers should

consider implementing (or enhancing) a compliance program that includes the following key elements:

**Assessment:** OFAC recommends that organisations conduct routine risk assessments, including taking a holistic review of their 'touchpoints to the outside world'. This includes customers, supply chains, intermediaries, counterparts, products, and geographic locations of the foregoing.

**Internal controls:** Written policies/procedures prevent misconduct by identifying, stopping, escalating and, if appropriate, reporting violations. Companies should also implement and document their sanctions screening process. The failure to screen for SDNs in a voyage or other transaction will be an aggravating factor (and likely cause of) an enforcement action.

**AIS diligence:** OFAC has been encouraging stricter policies against AIS manipulation. Owners and operators should assess the AIS history of new and existing clients, and refrain from conducting business with vessels that have a history of AIS manipulation inconsistent with SOLAS.

**'AIS switch-off' clause:** To encourage best industry practices, OFAC recommends owners and operators

include in their agreements an 'AIS switch-off' clause providing for termination where clients demonstrate a pattern of AIS manipulation. This language should explicitly prohibit AIS disablement or manipulation inconsistent with SOLAS. Any AIS 'spoofing' or 'switch-off' not necessary for safety purposes, should be grounds for contract termination.

**Vessel monitoring:** Vessel owners should monitor ships to ensure that AIS is consistently used. Monitoring AIS is recommended especially for vessels capable of transporting cargoes that are susceptible to STS transfers, like coal and petroleum products.

**Management commitment:** In an enforcement action, OFAC will consider the extent to which senior management is committed to sanctions compliance and creates a 'culture of compliance,' including ensuring compliance personnel have adequate resources, training, and authority to complete their function.

**Confidential reporting/staff protections:** Organisations should implement confidential mechanisms for employees to report suspected or actual violations of law or sanctionable conduct. Employees who reveal such behaviour should be protected from retaliation. 🚫



# Binding contracts and *The Leonidas*



**Caroline Pounds**  
Quadrant Chambers



**David Wartski**  
Mays Brown Solicitors

A question often asked by members is: Has a binding contract been concluded? The charterparty context provides a fertile breeding ground for such disputes in light of the speed and manner in which fixtures are commonly negotiated and agreed. Courts and tribunals are accordingly often called upon to work out whether or not the negotiations 'crossed the finish line', as Foxton J said in the recent case of *Nautica Marine Limited v Trafigura Trading LLC* [2020] EWHC 1986 (Comm) (*The Leonidas*).

The basic legal principles are easily stated, if not always so easily applied. In summary, the parties to any contract will only be bound if:

- (a) There has been offer and acceptance of all essential terms;
- (b) Those essential terms are certain – which is why an agreement to agree is unenforceable (*Walford v Miles* [1992] AC 128);

- (c) There is consideration; and
- (d) The parties intended to make a binding contract. In this regard, the task of the relevant court / tribunal is to ascertain whether or not the parties objectively intended to enter into a mutually binding contract. To that end, the court /tribunal will have regard to the particular context, the nature of the putative contract and the whole of the parties' communications and conduct.

Freedom of contract dictates that it is for the parties to determine at what stage they wish to be bound. For example, they may agree that a charterparty will only become binding on the fulfilment of a pre-condition such as 'subject to board approval'. Another example of a pre-condition is 'subject to details' which is generally (albeit not necessarily) construed to mean that the agreement will only be binding once all the details have been ironed out and

agreed (see, e.g., *The Junior K* [1988] 2 Lloyd's Rep 583).

On the other hand, the parties may decide that their agreement is to be immediately binding but that the obligation to perform is subject to satisfaction of a 'performance condition'.

Both pre-conditions and performance conditions may be expressed by the words 'subject to', making it difficult to discern precisely what type of 'subject' is intended. In *The Leonidas*, the Court has clarified the principles to be applied when determining this issue.

The dispute arose out of negotiations between Nautica Marine Ltd ('Owners') and Trafigura Trading ('Charterers') for the charter of the M/V '*Leonidas*' ('Vessel'). It was common ground that, by 8 January 2016, the parties had reached a non-binding agreement in principle, as set out in a 'preliminary recap', 'subject to Chtrs' S/S/RMGT approval'. That phrase meant that the putative charterparty was 'subject' to:

- (a) Sufficient cargo being available;
- (b) The suppliers' approval;
- (c) The approval of the receivers of the cargo; and
- (d) The approval of Charterers' management.

## When a 'subject' can only be resolved by its removal by one or both of the parties, rather than automatically on the happening of some external event, it is likely to be a pre-condition rather than a performance condition.

Charterers were to satisfy or remove these 'subjects' by 12 January 2016. The dispute focussed on the meaning and effect of the second subject – the 'Suppliers' Approval Subject' ('SAS') – in circumstances where: (i) The remaining three subjects were lifted by Charterers; (ii) The parties agreed in correspondence to extend the deadline for removing the SAS; but (iii) The SAS was not lifted by the extended deadline and Charterers thereafter did not perform the fixture, leading Owners to claim damages in respect of Charterers' alleged repudiatory breach.

It was Owners' case that a binding charterparty had been concluded, subject to a condition that it would cease to be binding if the SAS was not satisfied (i.e. that the SAS was a performance condition) and that Charterers were in breach of an implied obligation to take reasonable steps to satisfy that condition. Charterers, on the other hand, contended that the SAS was a pre-condition, with the consequence that no binding charterparty had been concluded at all.

Foxton J dismissed Owners' claim, in a detailed judgment in which he set out the principles to be applied when determining the legal effect of a contractual 'subject', as follows:

- An important factor in determining whether a 'subject' is a pre-condition or a performance condition is whether its satisfaction depends upon the decision of a contracting party, or that of a third party. A 'subject' is more likely to be a pre-condition if its fulfilment involves the exercise of a personal or commercial judgment by one of the putative contracting parties. Where, however, the 'subject' was within the control of the third party, it was more likely (although not invariably) to constitute a performance condition.

When a 'subject' can only be resolved by its removal by one or both of the parties, rather than automatically on the happening of some external event, it is likely to be a pre-condition rather than a performance condition.

- Foxton J also held that, in circumstances where the SAS formed part of a compendious phrase (with the first and last subjects contained therein constituting conditions precedent), it would be surprising if the SAS had a different status, all the more so given its description as a 'subject' and the tight deadline by which all the

subjects had to be lifted or approved. The shortness of time for compliance was a factor supporting a pre-condition, rather than performance condition, analysis.

- The degree of uncertainty as regards the meaning of the SAS also supported the performance condition analysis as it rendered it highly unlikely that the SAS was intended to create a contractual obligation of some kind (that being the inevitable consequence of classifying it as a performance condition).
- Foxton J also rejected Owners' argument that, by way of their correspondence, the parties had agreed to change the SAS from a pre-condition to a performance condition. Whilst he accepted that parties who had been negotiating within a 'subject's' framework could conclude a contract without expressly addressing that 'subject', that had to be objectively clear from their conduct and was not something to be lightly inferred. No such change had occurred in the present case.

Foxton J accordingly held that no binding contract had been concluded between the parties. His detailed analysis and application of the applicable principles will likely now provide the starting point in future disputes of this nature. 📄

# The COVID-19 pandemic and claims

The pandemic caused by the coronavirus and COVID-19 outbreak has led to significant changes to society and the way we run our lives, all over the world. The global shipping industry is faced with significant challenges, not least regarding the safe manning of vessels, ensuring safe crew changes and travel during the pandemic, which is here to stay for the near future and until a reliable and approved vaccine is available.



**Birgitta Hed,**  
Senior Claims Manager, P&I  
Team Gothenburg, and  
Chair of the International Group  
Personal Injury Subcommittee

## The story so far:

### Crew changes

Shipping is vital to global trade with up to 90 per cent carried out by vessels. The long-term wellbeing of seafarers is essential for safe operations and should accordingly be prioritised and high on everyone's agenda. For that purpose, the United Nations (UN), the International Maritime Organization (IMO) and other industry bodies are appealing for governments to take appropriate action for the hundreds of thousands of seafarers who remain at sea as a result of COVID-19 travel restrictions, and for the authorities to formally designate professional seafarers and marine personnel as 'key workers', regardless of nationality, to facilitate safe crew changes and make a diligently approved vaccine a priority.

This would assist in enabling the approximately 150,000 crew changes that normally take place every month, and secure the safe operation of vessels by preventing fatigue and the consequences of crew contracts being extended beyond industry standards, and the protection provided under the Maritime Labour Convention (MLC).

### Mental health issues

The uncertainty that many seafarers face in not knowing when they will be able to return home coupled with the anxiety of not knowing how their family is coping in the crisis can be very stressful, and may lead to complex mental health issues and in a worst case scenario, suicide. It is estimated that approximately 400,000 seafarers are presently stranded around the world.

So far, we have not seen the increase in cases referring to mental health issues that we had anticipated, but it is still early days in the pandemic and accordingly too early to advise upon with any certainty. Hopefully this is also the result of our members taking the increasing concern about the complex mental health issues, as well as the other difficulties experienced on board because of extended crew contracts, very seriously.

### The International Group (IG)

The well-being of seafarers is of extreme concern to the IG, which is working closely together with a number of industry organisations to support and assist in finding a way forward to carry out crew changes safely and effectively. The IG is also continuing to work with its





government and industry partners, as well as voluntary organisations, to identify anything further that can be done to prevent health problems during the current COVID-19 pandemic.

The IG Personal Injury Subcommittee is actively involved in this process and is as such in close contact with several industry organisations to provide as much assistance as possible.

At the onset of the pandemic, the Secretariat of the IG rapidly set up a special COVID-19 working group consisting of all 13 constituent P&I clubs to focus on the difficulties and challenges faced by our respective members as a consequence of the global situation.

### **COVID-19 guidance**

To assist its members, The Swedish Club provides COVID-19 guidance and COVID-19 port information on its website, which is continually updated. Legal guidance and articles on the subject have been published in Triton, and useful information is shared via the Club's Trade Enabling Loss Prevention (TELP) programme. All of this is made

possible with the assistance of the Club's correspondents around the world, who report back to the Club on restrictions on vessels and crew, and deal with COVID-19 and its impact on shipping in ports and countries worldwide.

### **COVID-19 from a claims perspective**

It is too early to predict the cost and frequency of claims resulting from COVID-19, but the pandemic has resulted in a very busy period in relation to people claims, including, but not limited to, reports on fatigue and potential mental health problems as a consequence of the extension of crew contracts.

### **Seafarers needing medical assistance**

In the beginning there was great concern and a number of cases where seafarers disembarking in critical condition and needing medical attention were denied disembarkation and treatment ashore. With the assistance of the Club's

## **The imminent problem of safe and effective crew changes can hopefully be resolved.**

correspondents, and in some cases the involvement of diplomatic channels, those cases were resolved by either disembarkation eventually being allowed or medical attention provided on board by an attending physician. Those cases were extremely frustrating but few in number. As time passes authorities and governments appear to have taken note of the Protocols and Circulars issued by the UN and the IMO, which has resulted in a more humane approach. The publications from other industry organisations have also helped by providing concrete guidelines aimed at placing the plight of seafarers high on everyone's agenda.

## Repatriation

A remaining problem occurs when repatriating a crew member who has obtained medical treatment, been discharged from the clinic and assessed fit to fly home. With some countries closing their borders they may have difficulty returning home by air, or alternatively experience severe delays and quarantine restrictions both before departing but also following repatriation.

## Difficulties in testing

A significant challenge in handling claims has been the variety of restrictions imposed by governments and authorities including not only the required testing procedures but also the varied quality of tests presently on the market, where even the most accurate PCR tests are still not 100% reliable.

## The race for a vaccine

The fact that the COVID-19 outbreak and the illness itself is so unpredictable and the consequences to a great extent still unknown, means that the challenges are significant until a reliable vaccine is available. Some vaccines are presently at stage three of testing and some are now approved by diligent authorities which is of significant importance. The

# It is too early to predict the cost and frequency of claims resulting from COVID-19, but the pandemic has resulted in a very busy period in relation to people claims

Swedish Club would recommend against members voluntarily using a vaccine which has not been approved and authorised by the appropriate and designated authorities following the completion of vigorous tests, to avoid adverse consequences of a vaccine which has not been adequately and correctly approved.

## Vessels under quarantine

We have handled a number of cases where crew members have tested positive for COVID-19 resulting in the vessel being placed under quarantine by the authorities.

The quarantine period has, with very few exceptions, been 14 days with that time extended by another 14 days as soon as any member of the crew shows symptoms and tests positive.

This is a very frustrating and costly situation for a vessel to be in even with P&I insurance in place to cover additional costs and expenses incurred by the member during the period of quarantine, i.e. the net loss to the member over and above the expenses that would have been incurred had it not been for the quarantine, which excludes running expenses during the delay and indirect consequences thereof. For that reason, it is vitally important and highly recommended for a member to have a documented COVID-19 Protocol for PCR testing procedures.

In conclusion, with the impact and cooperation of influential industry organisations and a humane and understanding approach by governments, the imminent problem of safe and effective crew changes can hopefully be resolved. We can then wait for effective vaccines to be made available in the interest of all. Until then we will continue to do our utmost to assist our members and their seafarers in this very challenging and difficult time. 🙏



# 2020 member satisfaction survey

The Swedish Club recently completed its annual member and broker survey. We would like to thank members and brokers for taking part and helping to shape the future of the Club.

*“As we are both the shipowner, and cargo owners, we are well pleased with the service provided by the Club in the past 18 months and hope to continue for many years to come.”*

Source: Netigate survey, September 2020

**Members and brokers satisfied to very satisfied with the Club's overall quality and performance**  
**> 90%**

**Top scores in quick response in urgent matters**

Marine & Energy, P&I claims handling, and UW dept.

**Professional, reliable and easy to do business with**  
**> 90%**

Brand association characteristics and most important for member satisfaction

**Request for more case studies and information e.g. charterparties and bills of lading**

# Moving forward with the Club's sustainability agenda

The Club continued to make progress on its corporate social responsibility commitments when, at the Board meeting, held on 8 October 2020, The Swedish Club's Board formally voted to support an Environmental, Social and Governance (ESG) framework policy. This policy identifies the responsibilities of the Club and commits us to developing a series of practical measures to guide and support both our employees and our members in creating a truly sustainable organisation fit for the future.



**Malin Högberg,**  
Corporate Legal Director

The Club's management team has now been tasked with identifying and strengthening the role that the Club will play for a sustainable society. At the same time our employees now work to see how these ESG commitments can be applied practically across their individual departments, in addition to looking for opportunities to work with our members in this area.

The Club's Board has decided that the Club adopt four of the United Nation's Global Goals for Sustainable Development as a guiding principle, providing a clear direction for the Club's future ESG efforts. The adopted goals are:

- UN Goal 3: Good health and well-being - the Club will promote health and safety in work life, on-shore as well as off-shore.
- UN Goal 12: Responsible consumption and production - the Club will promote responsible consumption of water, energy, and food.

- UN Goal 14: Life below water - the Club will work to safeguard life below water through active loss prevention and relevant insurance solutions for its members.
- UN Goal 16: Peace, justice, and strong institutions - the Club promotes the rule of law and works against the use of bribes and other illegal measures.

In addition, the Club has also agreed to follow the United Nation's Principles for Sustainable Insurance roadmap. It has confirmed the following intentions:

- To embed environmental, social and governance issues relevant to its insurance business in its decision-making.
- To work together with its clients and business partners to raise awareness of environmental, social and governance issues, manage risk and develop solutions.
- To work together with governments, regulators, and other key stakeholders to promote widespread action across society and environmental, social and governance issues.

- To demonstrate accountability and transparency in regularly disclosing publicly its progress in implementing the principles.

These commitments are the first formal steps in what will be a long term process of constant review and re-evaluation.

In a statement, Lars Rhodin, The Swedish Club's Managing Director, said; "As a mutual we have long held the ESG values of transparency, sustainability and accountability close to the heart of our business. This move very much formalises the work that the Club has already been doing to aim for sustainability in our operations, and to consider the impact on society and the environment at large in everything that we do. At the same time, we cannot downplay the importance of constant vigilance and the need to set clear goals for the future."

# Notice board

## Guardcon update

Recent incidents of rogue private security guards have raised some interesting points in relation to Guardcon, the BIMCO agreement for the hire of the services of private maritime security guards on board ship.

Guardcon was introduced by BIMCO in 2012 in response to the situation in the Gulf of Aden/off the Somali coast. Guardcon was not, however, an appropriate contract for the dangers in the Gulf of Guinea/West Africa involving territorial seas rather than international waters. BIMCO chose not to produce a separate contract for West Africa but the International Group did suggest appropriate amendments to cater for the different factual matrix.

Guardcon contains a knock-for-knock liability provision, which makes it likely that the consequences of the actions of a rogue security guard in respect of damage and delay to the ship and injury to the crew would rest with the member.

Introducing the Guardcon contract BIMCO explained that the security requirements were intended to weed out the less serious players – those who might put the shipowners and crew at risk.

The knock-for-knock liability regime of Guardcon makes it all the more important for members to ensure that the service provider selected offers a reliable, quality product. The only way for owners to retain full control of the quality of the service provider and the service provided, is to appoint the contractor themselves. As different interests may be at stake, owners should consider carefully whether to allow the charterers to choose and appoint the contractor. This can still be, as it usually is, at charterers' expense as provided for by BIMCO's standalone contractual provisions - see BIMCO Piracy Clause for Time Charter Parties 2009.

## A word of warning – arbitration award enforcement in the Netherlands

Anyone contracting with an owner or charterer based in the Netherlands should bear in mind a recent Dutch Supreme Court Ruling.

Russian-based owners chartered their vessel to a Dutch charterer. The charterparty was concluded by email and, as is common in the industry, it was not engrossed and signed by the parties.

The owners' subsequently pursued a deadfreight claim before a London arbitration tribunal, but enforcement of the arbitration award in the Netherlands failed because the owner was unable to submit 'an original arbitration agreement' to the Court. It is strongly advised that you engross and sign any contract where the other party is based in the Netherlands, in case enforcement of an arbitration award has to be made in that jurisdiction at a later date.

## Gulf of Guinea – extension of excluded area

In its circular dated 21 September 2020 (JWLA-025), the Joint War Committee at Lloyd's extended the Gulf of Guinea excluded area to comprise the waters enclosed by the following boundaries:

- a) On the west, from the coast of Togo 6° 06' 45" N, 1°12'E
- b) South to high seas point 0° 40' S, 3° 00' E
- c) Then east to Cape Lopez Peninsula, Gabon 0°40'S, 8° 42'E.

This extension has been caused by increased piracy activity in the area, which has expanded into Togolese waters.

Members are advised to follow security recommendations and best management practices when transiting and calling to the area. Information can be found on the IMO website ([www.imo.org](http://www.imo.org)).

# Staff news

## GOTHENBURG



**Patrik Del Mestre**

Patrik joined Team Gothenburg in August 2020 as Claims Executive, P&I. He has a maritime background, having worked at A1 Offshore Solutions, Blue Star Line and A.P. Moller Maersk



**Richard Raimer**

Richard joined Team Gothenburg in November 2020 as Underwriter. Richard has spent most of his career working with Swedish shipowners, including Transatlantic and Transbulk, where he has held various senior positions.

## PIRAEUS



**Maria Argiropoulou**

Maria joined Team Piraeus in September 2020 as Team Assistant. Maria was previously employed by Cromar Insurance Brokers Ltd in Athens.

## HONG KONG



**Kanis Tsang**

Kanis joined Team Asia in November 2020 as Team Assistant. Kanis previously worked at a marine insurance broker in Hong Kong.

# Club Quiz

1. Why was the submarine yellow in the Beatles' song?

- 1 Ringo Starr had a dream
- X Unclear
- 2 It looks like a medical capsule

2. What is the name of the world's largest aircraft carrier?

- 1 USS Gerald R Ford
- X USS Nimitz
- 2 USS George H W Bush

3. What is the name of the cold northerly wind from central France and the Alps to Mediterranean?

- 1 Sirocco
- X Solano
- 2 Mistral

Mail your answer to [quiz@swedishclub.com](mailto:quiz@swedishclub.com) The first correct answer pulled out of the hat will win a prize.

**Winner of Quiz No 2-2020**

Gun Fhager,  
Kiltank Shipping AB,  
Donsö,  
Sweden



The right answers to Club Quiz No 2-2020 are:

- 2 **90%**  
How much of the world trade is seaborne?
- X **Kon-Tiki**  
Which ship is connected to the Norwegian ethnographer Thor Heyerdahl?
- X **1962**  
When did 'Triton' start serving as a symbol for The Swedish Club?

# Club Calendar 2020

For the safety and wellbeing of our valued members, business partners and staff members, we have cancelled all face-to-face Club events until further notice.

We are running a programme of webinars, which you will find on our web <https://www.swedishclub.com/training/webinars/>

To take part, or to find out more, please contact [webinar@swedishclub.com](mailto:webinar@swedishclub.com).

We all hope that you keep well, and we look forward to meeting again when circumstances permit.





**The Swedish Club** is a mutual marine insurance company, owned and controlled by its members. The Club writes Protection & Indemnity, Freight, Demurrage & Defence, Charterers' Liability, Hull & Machinery, War Risks, Loss of Hire insurance and any additional insurance required by shipowners. The Club also writes Hull & Machinery, War Risks and Loss of Hire for Mobile Offshore Units and FPSOs.

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