



The Swedish Club

# Triton

No. 1 - 2015

Using  
hybrid fuels  
for ECA-SOx  
compliance

## Operational guidance

Page 22-23

New low  
sulphur  
emissions  
in ECAs

## Owners' duties

Page 20-21

## UPDATED all the time

with "the new" Swedish Club OnLine

Page 8-9



**Meet Tor E. Svensen** – CEO of DNV GL Maritime

Page 26-28



Page 12-13



Page 20-21



Page 26-28

## LEADER

Milestones passed on the journey ▶ 3

## STRATEGIC BUSINESS DEVELOPMENT & CLIENT RELATIONSHIP

Continued stable performance and good growth ▶ 4

## LEGAL

Legal update ▶ 5

Lessons learned from the OW Bunker bankruptcy ▶ 6-7

## CLUB INFORMATION

The Swedish Club extranet – SCOL keeps track of your insurances and simplifies collaboration with the Club ▶ 8-9

## P&I / ENVIRONMENT

Confusing USA Environmental regulations ▶ 10-11

## P&I / MIGRANTS AT SEA

Refugees at sea  
– what is covered and what is not? ▶ 12-13

## P&I / WARRANTY OF SAFETY

English Court of Appeal overrules high court judgement ▶ 14-15

## P&I / ARREST / REGULATIONS

Arrest is possible where counter-security is not forthcoming ▶ 16-17

Reflections on Alexandros T and Brussels Recast  
– both total losses? ▶ 16-17

## FD&D

Clausing the bill of lading ▶ 18-19

New low sulphur emissions in ECAs  
– Owners' duties ▶ 20-21

## MARINE

Using hybrid fuels for ECA-SOx compliance  
– operational guidance ▶ 22-23

## LOSS PREVENTION

How to navigate away from claims ▶ 24

PEME agreements renewed ▶ 25

## INTERVIEW WITH TOR E. SVENSEN

DNV GL – a class act ▶ 26-28

## CLUB INFORMATION

News from Team Gothenburg ▶ 29

News from Team Piraeus ▶ 29

Sea training programme for office employees at The Swedish Club ▶ 30-32

News from Team Norway ▶ 33

News from Team Asia ▶ 33

Notice Board ▶ 34-35

Out & About ▶ 36-37

Midsummer's Eve – celebrating the longest day of the year ▶ 38

Club Calendar ▶ 39

Staff News ▶ 39

Club Quiz ▶ 39

Contact ▶ 40

# Milestones passed on the journey

PHOTO: Jonas Ahlsén



Lars Rhodin  
Managing Director

Dear members and associates

2014 was a stable year for the Club and we experienced progress in many areas. The claims climate was benign and with that we mean an outcome better than we had expected at the beginning of the year. Marine insurance is inherently volatile and that works in both directions. We had a strong operating result of USD 18.4 million, underpinned by a consolidated net combined ratio of 86%. In fact, all insurance products came out below 100%.

The Club needs to develop with its members and be aligned with the market. What is most important is to deliver on the promise. That is why members choose to entrust their fleets with us. We were happy to pass the 40 million GT entry milestone for P&I in September 2014. We now look forward to developing the fleet at a continued, stable pace.

Another milestone was passed in December. A.M. Best Ratings Services awarded the Club a financial strength rating of A- (Excellent) and an insurers credit rating of "a-". This is an independent third party assessment of capital strength and operating performance. The assessment fully ticks the box of delivering on the promise.

Also of importance is what we can do for members in addition to the insurance promise. In this issue of Triton you can

read about the recent follow-up on Navigational Claims, for example. Collisions, groundings and contact incidents remain 50% of the total cost of Hull & Machinery claims. Maritime Resource Management (MRM) is tailored to address the most common shortcomings – not to follow adopted procedures and the failure to communicate in the decision process onboard. The MRM training programme is not to point a finger. It is how we can work together to reduce the cost of casualties.

The world is becoming more and more regulated, for ship-owners and for insurance providers. The reason is to protect defined interests, public as well as private. We have our fair share of regulatory impact in the Solvency II preparations – a massive undertaking in the industry. We take the attitude to learn and endorse the underlying reasons of the regulations in a proactive manner as possible. Only then can we expect the same from our insured members.

**The Swedish Club** is an A-rated mutual marine insurance company. As one of the world's leading marine insurers it provides insurance solutions to shipowners, charterers and operators from its head office in Gothenburg and offices in Piraeus, Hong Kong and Oslo. The Club is a member of The International Group of P&I Clubs and is governed by the core values Proactive, Reliable and Committed. For more information, see [www.swedishclub.com](http://www.swedishclub.com).



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**Production Coordinator** Susanne Blomstrand

**PR Consultant** Elaborate Communications Ltd

**Layout** Eliasson Information, Gothenburg

**Print** PR Offset, Mölndal 15045000B

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# Continued stable performance and good growth



Lars A. Malm  
Director  
Strategic Business Development & Client Relationship

**Last year was similar to 2013 in many aspects. The Club experienced very few large claims across all classes of business and overall good growth. As to the Club's underwriting result we are of course happy to note that all classes performed well and, to some extent, better than expected. While we benefitted from the absence of larger claims it is also fair to say that our continued efforts to diversify and adjust our business portfolio continue to have a positive impact on results.**

Diversification last year mainly focused on developing and expanding our entry into the Offshore segment and Builder's Risks. In addition, we have continued to make good progress with our Charterers' Liability business where sales and marketing has been very much aided by the launch of our new All-In-One cover. For 2015 there are no new business areas in sight but we will continue to develop complementary cover, providing a seamless bridge between the more traditional cover on the Liability and Marine side of our business.

## Complementary insurance cover

Primarily, our focus will be on products that are designed to address a shortfall in revenue as a consequence of the vessel not being able to trade. These products are to a large extent a complement to the traditional Loss of Hire cover. The driver behind diversification is to us two-fold; firstly a new business area should add to the overall financial performance of the Club and secondly, any new business must fit into our overall brief and add value to our members as far as our ability to offer competitive and user-friendly insurance solutions is concerned.

The user-friendliness is of course not limited to purely the technical structure of the products we can offer, but also very much entails the service side of our business. No matter how good your cover looks like on paper – the true test of any prod-

uct's true worth will only show when there is a claim and in what way that claim is handled.

It cannot be emphasised enough that "perception is reality" and as a consequence we like to stay very close to our members in the casualty handling process. By staying close to members and keeping an open mind to their feedback, we can adapt to our members' individual needs. Our team-based organization with geographical responsibilities and delegated authority provides us with a unique ability to convert our experience into a hands-on and tailor-made approach.

## SCOL (Swedish Club OnLine)

Our B2B platform Swedish Club OnLine (SCOL) has been upgraded and whilst our business is very much driven by long relationships a lot of the day-to-day transactions can be carried out online. We believe that making use of technology with a view of simplifying administration and reducing the cost of transactions will benefit our business partners. Being cost-effective and offering transparency is of high priority for us.

One feature of the enhanced SCOL information is improved information on claims. Going forward, our business partners will receive monthly reports outlining changes in their claims status. This will assist our business partners to quickly monitor relevant changes to their claims, and it will facilitate relevant feedback to the Club. This new feature will include, but is not limited to, notifications of payments, changes in estimates, issuing of securities, new claims, claims closed, time bar dates, jurisdiction etc.

“Primarily, our focus will be on products that are designed to address a shortfall in revenue as a consequence of the vessel not being able to trade.”





# A wreck removal convention ahead



**Anders Leissner**  
Director  
Corporate Legal and FD&D

**THE NAIROBI WRECK REMOVAL CONVENTION** will come into force on 14 April. Since most states already have various means (with or without legislation) to force the removal of wrecks that are inconveniently located at the cost of P&I insurance, the Convention will probably not make any major difference. However, it will be interesting to see to what extent the Convention's provisions about proportionality and limitation of liability for the shipowner will have on unreasonable and disproportionate demands by states.

The raising of the *Costa Concordia* in one piece was an exceptionally risky operation that, if it had failed, could have resulted in massive environmental damages and financial losses. The *Costa Concordia* illustrates an inherent problem for wreck removal operations, namely that the combination of unlimited liability for the shipowner, an inexhaustible insurance policy and a decision maker – the state – that stands no financial risk, is an unfortunate combination that leads to cost-inefficient decisions in the best case, and plainly dangerous decisions in the worst case. It remains to be seen if the Convention can change this.

One pressing issue with the Convention is that very few flag states have ratified it. As a result, P&I clubs and shipowners have an onerous task to ascertain to which state blue cards (proof of financial security) should be issued. Indeed, the administration of blue cards under international conventions has become an increasingly important – and complex – task for P&I clubs.

## Two co-assured dilemmas

The English Court of Appeal has recently resolved several interesting issues following the grounding of the *Ocean Victory* in Kashi-ma port (*Gard Marine & Energy Ltd v China National Chartering Co Ltd* [2015] EWCA Civ 16). One finding was that even if severe swell in a port is not abnormal, and strong wind in the same port is not abnormal, a combination of the two can qualify as an “abnormal occurrence” with the result that the port was legally safe. (A port is generally safe if the cause of damage had nothing to do with the features of the port but instead was an “abnormal occurrence.”)

One further, and perhaps more controversial finding, was that even if the port had been legally unsafe there could have been no claim against the time charterer for breach of the safe port warranty in the charterparty because the owner and the bareboat charterer had the same hull insurer. As a result, the so-called right of sub-

rogation did not arise, and a claim could not have been passed on to the time charterer. Even though the finding may be technically correct, it is noted with some concern that a standard co-assured entry can prevent a major recovery (the claim in *Ocean Victory* was USD 70 million). The ruling prompts the question why a particular insurance solution should prevent a recovery action against a wrongdoer.

The second co-assured dilemma concerned losses suffered by BP following the Deepwater Horizon casualty (*In Re Deepwater Horizon*, No. 13-0670, Supreme Court of Texas, 13 February 2006). BP sought insurance cover from Transocean's liability insurer for sub-surface well pollution on the basis that BP was named as co-assured in the contract with Transocean.

The insurance policy referred to the language of the contract. The contract, on the other hand, made BP liable for sub-surface well pollution vis-à-vis Transocean. The Texas Supreme Court decided against BP because the insurance policy did not name BP explicitly and in addition BP had chosen themselves to answer for sub-surface well pollution.

The case, as well as the *Ocean Victory*, are harsh reminders that co-insurance is not an entirely straightforward issue, and the terms of the contract between the co-assured and main assured can have unexpected and unwanted consequences.

## Look beyond the letter

The owners of the *B Atlantic* (Comm Ct [2014] EWHC 4133) were relieved to receive the judgement on their claim against the war risk insurers for a total loss. The vessel was detained on 13 August 2007 in a Venezuelan port for having 132 kg of cocaine strapped to the hull. The drugs were assumed to have been affixed by persons unknown, but Venezuelan courts nevertheless convicted two officers and confiscated the vessel after three years of detention.

The insurers argued the total loss was due to “infringement of any customs regulations”, which was an exception in the policy. The court, ruling in the owners' favour, adopted a holistic approach and held that it was not a case of “infringement” but instead a manifestation of a malicious act by third parties. Hence the exception did not apply. A reminder that the exact wording does not always count, not even in the legal world.



# Lessons learned from the OW Bunker bankruptcy



**Anders Leissner**  
Director  
Corporate Legal and FD&D

**OW BUNKER** was one of the world's largest bunker suppliers until November 2014, when bankruptcy proceedings were initiated against five Danish OW Bunker entities. The default of OW Bunker has given rise to several complex practical and legal issues, in particular where the OW Bunker company acted as an intermediary. Shipowners and charterers who contracted with OW Bunker have been faced with competing claims for the same stems: one under the OW Bunker invoice, and one from any unpaid physical bunker supplier. The situation has generated numerous legal disputes and also some lessons learned, in the case that a contractual bunker supplier becomes insolvent.

## Arrest threat

The threat of arrest of the vessel and/or the bunkers is clear: an unpaid physical supplier, sub-contracted to the defaulting supplier, may attempt to enforce a so-called "retention of title clause", or bring an action in tort for "conversion". In some jurisdictions, a party who supplies bunkers is entitled to exercise a maritime lien, with the vessel being bound to pay directly for the fuel supplied. Whether a vessel can be arrested in a particular jurisdiction will depend on the law in that jurisdiction and local advice is always needed.

## Competing claims

Purchasers can expect to receive competing demands for payment; from the trustees in the bankruptcy and from the physical suppliers as well as from banks. In the case of OW Bunker, at least one bank, ING Bank N.V, held an assignment from OW Bunkering & Trading A/S and certain of its subsidiaries of the proceeds from bunker sales. The assignment to ING Bank N.V. was referred to in the payment terms of some invoices issued by OW Bunker. The Bank notified OW Bunker's customers that they must pay money

owed to OW Bunker, directly to the Bank. Notably, ING's rights were being challenged in litigation in both London and New York. The outcome from those proceedings is unknown at the time of writing this article.

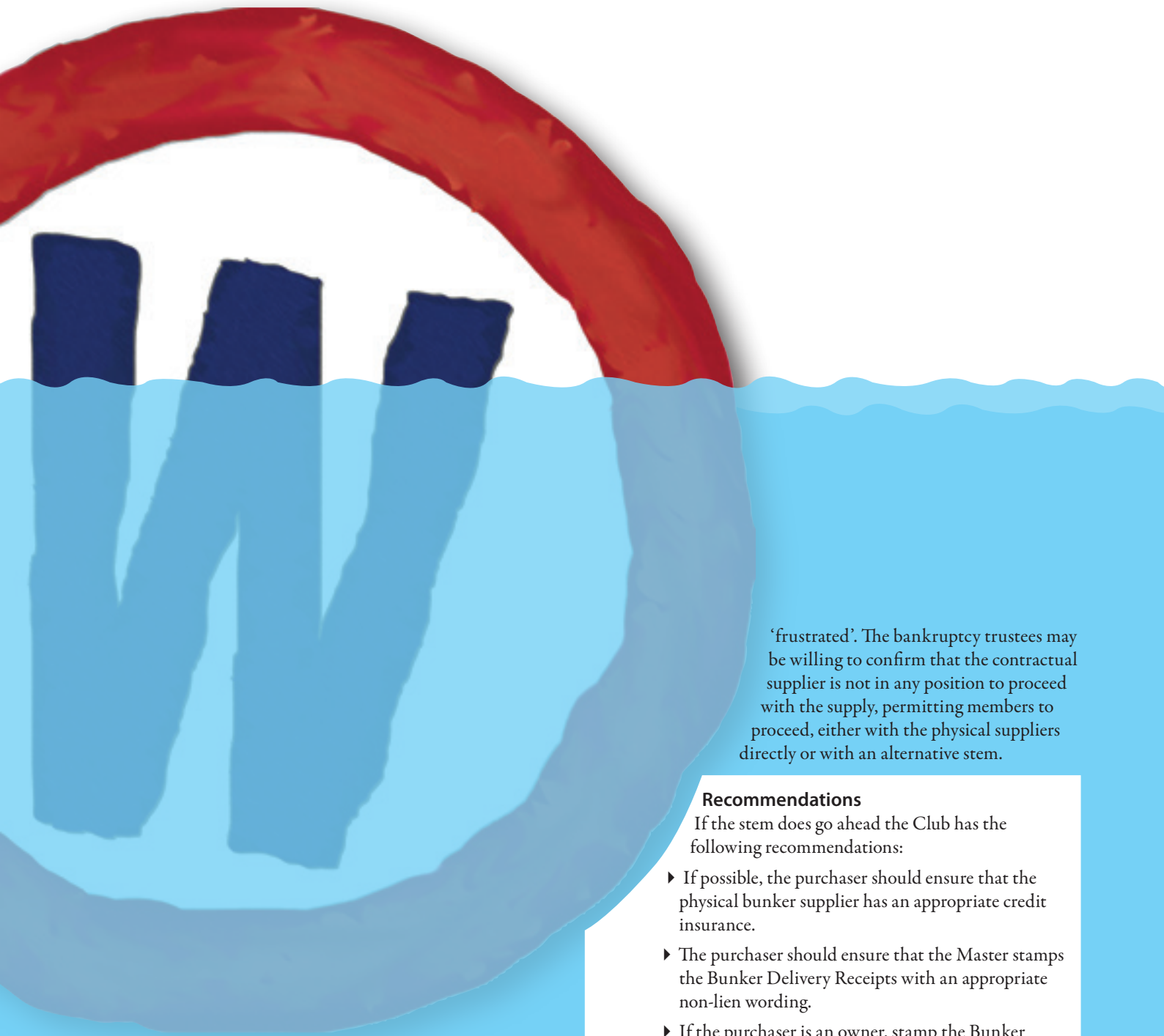
ING's position was essentially supported by the bankruptcy trustees (Danish law firms Pleasner and Gorrissen Federspiel) who said that (1) all amounts outstanding to OW Bunker must be paid in accordance with invoices, failing which the bankruptcy estate will take legal action to enforce payment, and (2) that the physical suppliers must file claims in the bankruptcy as unsecured creditors.

## Claims concerning fuel that has already been supplied

This is a very problematic situation. The purchaser is probably obliged to pay any invoice issued by the contractual supplier unless it can be shown that the contractual supplier never had acquired title to the bunkers. On the other hand, the physical supplier may be entitled to seek payment directly from the vessel/owners.

Purchasers are advised to do the following:

- ▶ Identify all of the parties involved in the sale and physical supply chain to see whether any agreement can be reached which will avoid a double payment having to be made.
- ▶ If an agreement cannot be reached, purchasers should investigate if payment can be made to a court or pursuant to an interim escrow arrangement, or if any other pre-emptive legal remedy is available.



- ▶ The last resort for purchasers is to pay a second time and then seek recourse either from the contractual supplier in the bankruptcy, or from an intermediate time charterer responsible for providing fuel.

#### Claims concerning fuel that is yet to be supplied

If contracts are to be carried out after the contractual supplier has become insolvent, then the question of cancelling the stem arises. Besides the financial risk and possible disputes arising from a refusal to follow the charterers' orders to load the fuel, the legal status of the contractual supplier is at issue: if not all the supplier's companies are in bankruptcy (as was the case for OW Bunker) then cancellation may be wrongful. Advice should be taken on the status of the contract and whether it has, amongst other things, become

'frustrated'. The bankruptcy trustees may be willing to confirm that the contractual supplier is not in any position to proceed with the supply, permitting members to proceed, either with the physical suppliers directly or with an alternative stem.

#### Recommendations

If the stem does go ahead the Club has the following recommendations:

- ▶ If possible, the purchaser should ensure that the physical bunker supplier has an appropriate credit insurance.
- ▶ The purchaser should ensure that the Master stamps the Bunker Delivery Receipts with an appropriate non-lien wording.
- ▶ If the purchaser is an owner, stamp the Bunker Delivery Receipts with a notice that the stem is made solely for the charterers' account.

Needless to say, shipowners and charterers should exercise extreme caution before entering any contracts with any company associated with an insolvent bunker supplier.

In conclusion, perhaps the most important lesson to be learned is that there is no general answer or guidance in a situation like this. What steps to take in a given situation are ultimately dependent on the circumstances prevailing at the time. Retaining legal advice, on occasion from various jurisdictions, is essential. Notably, disputes arising out of these types of situations are generally covered by the FD&D insurance.



# The Swedish Club's extranet SCOL keeps track of your insu and simplifies collaboration w

**In a world where most of us turn to Internet as soon as we need an answer to a question, we always have to re-evaluate the web services we offer. This year we have updated and introduced additional usability to our extranet – SCOL – based on our members' input. SCOL (Swedish Club OnLine) gives our members and business partners access to custom-made information about insurance, claims, records, notifications and loss prevention, relating to their entry with the Club.**

A basic version of SCOL – containing only records – was introduced already in 2000. Since then we have continually upgraded both system and content. Today we have more than 1000 external users with the majority visiting the platform on a regular basis topping out around renewal times. Now we are launching additional functionality to the extranet, which gives you a better view of your insurances and makes your contacts with us more efficient.

## Monthly reports & new claims details

SCOL shows you a compilation of all your insurances and claims results in one place, presented in a way that makes it easy to read and follow your performance with the Club. It is also a platform for communication between us and our members. The information is updated every night and you have access 24-7 wherever you are.

## News in SCOL

### EXTENDED CLAIMS INFORMATION

- explanations to reserve changes
- issued securities
- time bar
- applicable jurisdiction
- claims owner reference can now also be updated by the external user, not only by The Swedish Club
- reserve changes

### REPORTS

- monthly reports with claims changes and updates by e-mail

### A NEW LAYOUT

- with a graphical overview of your insurances

“We know the users are very positive about SCOL once they have logged in and found out what they can do in the system and how it simplifies their work. You get a general view pretty quickly and the tabs on the top bar makes it easy to navigate,” says Jakob Osvald, Senior Manager Underwriting, who has coordinated the updating of the system.

While working in SCOL, several of our business partners have returned to us with very useful feedback, which we now have implemented.

“The main alterations concern the area of claims handling, where you can now also receive extended information about securities, jurisdiction, time bars and reserve changes” tells Jakob.

Another interesting update is the monthly reports that will be automatically generated and sent to you after the end of every month.

“This means you will receive a detailed compilation of what has happened with your open claims over the last month. It makes it easier to survey the situation, when you don't have to check each tab for the latest changes,” explains Jakob.

## Personalise your pages

One feature in SCOL that Jakob wants to highlight, is the possibility of making personal settings, where you can do additional adjustments to only receive information about your special areas.

“As every user has different needs depending on their job, you can easily change what information you would like to see and what you want to exclude from your pages. Just go to “Personal settings” at the very top of the starting page, next to where you click to log out from SCOL and make your alterations.”

We would like to take this opportunity to point out that this is first and foremost a member's tool – not an internal club tool. The changes made spring mainly from user requests and we hope to receive your opinion about enhancements in the future. If you already have access to SCOL and have some suggestions about how we can further develop it, please send an e-mail to: [scol@swedishclub.com](mailto:scol@swedishclub.com). To get access, contact your local underwriting team in Gothenburg, Piraeus, Hong Kong or Oslo. You will find the addresses on the back cover of this magazine and on our website.





# Insurance with the Club



**Carola Weidenholm**  
Corporate  
Communications

## SCOL in brief

SCOL is the extranet of The Swedish Club, where you as a member or business partner have access to your insurances and claims.

### Main headlines

#### Insurance

Shows all details about your current insurance covers placed with the Club, but can also be filtered to include past covers. All information can be downloaded in an Excel report for further processing. Documents regarding your insurance cover are also available for downloading or forwarding.

#### Claims

Shows all details about your open claims. By selection in the filter, results will also include closed claims. All details can be downloaded in an Excel report for further processing. Documents regarding your claims are also available for downloading or forwarding.

#### Records

Shows premiums and claims figures for the last 5 years, together with the Loss Ratio calculation. There is the possibility of showing graphs and analysing claims development by run-off triangulation. Data can be downloaded as a pdf or Excel file for further processing.

#### Notifications

SCOL will notify you on a number of events when there is new information available. The tab shows history of all notifications produced.

#### Loss Prevention

Shows the performance of your fleet in respect of the number of claims and cost compared to other fleets of the same type. You will also find general Loss Prevention information together with "Monthly Safety Scenarios" – casualty scenarios ideal for ISM meetings.

#### Forms

Application forms for Charterer's Liability entries, Lay-up, Persistent/Non-persistent trading etc.

#### Getting access

Contact your local Underwriting team who will arrange for access. You will thereafter receive an e-mail with log-in information.

#### Support

An extended help function has just been added to the navigation bar at the top your starting page. For additional support, please contact: [scol@swedishclub.com](mailto:scol@swedishclub.com)

# Confusing USA Environmental



**David J. Farrell, Jr.**  
Admiralty Attorney  
Farrell McAleer & Smith LLP  
Cape Cod, Massachusetts, USA

David Farrell has been an Admiralty Attorney for 30 years and serves as Secretary of The Maritime Law Association of the United States and as an Associate Editor of American Maritime Cases. He enjoys running the GoteborgsVarvet (half marathon) with The Swedish Club Team.

**Because of the USA's geographic expanse, and its multiple governmental entities' concurrent or overlapping jurisdiction in maritime and environmental matters, it is impossible to concisely summarize the various laws and regulations that impact a ship in USA waters. But there can be no doubt that due to applicable international treaties, USA federal laws (sometimes inconsistently enforced by different federal agencies), and widely differing laws among the 50 individual states that shipowners and operators face a target filled radar screen in USA waters.**

A good example is the Act to Prevent Pollution from Ships ("APPS"), 33 U.S.C. §§ 1901 et seq., which is the USA law that implements MARPOL, the International Convention for the Prevention of Pollution from Ships. Under APPS, the USA has concurrent jurisdiction with the foreign-flag state over any foreign-flag ship operating in USA waters.

But there are two different USA agencies charged with enforcing APPS, first the US Coast Guard and second the US Environmental Protection Agency. Generally speaking, the US Coast Guard in conjunction with its onboard inspections verifies compliance with MARPOL's regulations whereas the US Environmental Protection Agency enforces MARPOL violations.

Those different functions can be significant: While the US Coast Guard is able to recognize the importance of maritime commerce as part of its broad mission, the US Environmental Protection Agency's narrower focus on the environment alone can result in harsh treatment of commercial violators – including ships.

## 1. Greenhouse Gas Regulations

Under MARPOL Annex VI and APPS, fuel oil with ultra-low sulfur ("ULS") content of 0.10% is now required on all ships (unless exempted under Annex VI) operating in the North American and US Caribbean Sea Emission Control Area ("ECA").

### US Coast Guard – compliance verification

The starting point for ULS compliance in USA waters is a US Coast Guard March 10, 2015 Marine Safety Bulletin, available at [http://www.uscg.mil/msib/docs/002\\_15\\_3-10-2015.pdf](http://www.uscg.mil/msib/docs/002_15_3-10-2015.pdf)

The Marine Safety Information Bulletin emphasizes that foreign-flag ships are subject to examination under Port State Control by the US Coast Guard while operating in the ECA (200 miles from the USA coast or 50 miles from the USA Caribbean coast). Ships found in violation of Annex VI will be detained and can have their customs clearance revoked; clearance will then be granted only when the deficiency is resolved and an LOU or approved security is posted for the maximum penalty amount.

The US Coast Guard also cautions it is aware that loss of propulsion can occur during ULS changeover so the Marine Safety Information Bulletin recommends that "advanced planning and preventive maintenance are critical" beforehand. As well, owners and operators are reminded under SOLAS to obtain "approval prior to operating with 0.10% fuel sulfur that has a flashpoint of less than 60 degrees Celsius."

### US Environmental Protection Agency – enforcement of violations

Despite these mechanical risks, a ship's full compliance with the ULS requirements in MARPOL Annex VI and APPS is clearly the best practice. A January 15, 2015 penalty policy memo out-

# Regulations

**UPDATE**  
**MARCH 2015**

lines civil fines the US Environmental Protection Agency can assess for violations. See <http://www2.epa.gov/sites/production/files/2015-01/documents/marinepenaltypolicy.pdf>.

Hope that you never have to read it. The penalty policy memo details factors that allow for fines up to USD 25,000 per day, based on the gravity of the violation, with a goal of deterring violations by removing any economic benefit from noncompliance. There is also a discussion of factors that could double or otherwise increase fines (such as poor record keeping or repeated noncompliance) or could reduce fines (such as cooperation). Revealingly, a fill-in-the-blank “Penalty Worksheet” demonstrates the US Environmental Protection Agency is ready to pounce when a violation occurs.

## 2. Ballast Water Regulations

USA ballast water regulations include a complicated set of legal standards which are evolving to accommodate emerging ballast water treatment technologies. Rules now in place and vague policy statements by the agencies have laid a confusing mine field.

For example, a Panamanian container ship in Seattle, at this writing, has been detained by the US Coast Guard for failing to send required ballast tank information to the National Ballast Information Clearinghouse, among other violations.

### US Coast Guard Ballast Water Regulations

Perhaps the best starting point is the US Coast Guard’s ballast water website, <https://homeport.uscg.mil/ballastwater>. It summarizes the essential point that unless a ship is equipped with a US Coast Guard approved Ballast Water Management System, in USA waters ballast water can neither be taken on unless the water comes from a USA public water system nor discharged except to an approved treatment facility.

### US Environmental Protection Agency – unnecessary duplication

Adding confusion, the US Environmental Protection Agency also regulates ballast water discharges through its Vessel General Permit (“VGP”) program; see <http://water.epa.gov/polwaste/npdes/vessels/Vessel-General-Permit.cfm>, claiming in a December 27, 2013 memo that it recognizes the need for a “coordinated response” with the US Coast Guard:

*As part of the regular coordination between EPA and the Coast Guard as co-regulators of ballast water discharges, the provisions of the 2013 VGP and Coast Guard requirements for ballast water were intended to work in tandem.*

But why in the first place was there any need for tandem co-regulation by two USA agencies? As might be expected, the two agencies’ implementation of their overlapping responsibilities resulted in inefficiency, making compliance by ships unnecessarily complicated, confusing, and costly.

The December 27, 2013 memo on the one hand notes the US Coast Guard “has indicated that, on a case-by-case basis, it may determine ‘that despite all efforts to meet the ballast water discharge standard requirements,’ it is necessary to issue a temporary extension....” This indicates the US Coast Guard’s willingness to work around practicalities faced by the maritime industry.

But on the other hand the same December 27, 2013 memo states the US Environmental Protection Agency “reserves the right to act at variance” from its own policy and to even change policy “at any time.” The memo, in other words, provides the maritime industry zero predictability on how the US Environmental Protection Agency will enforce its policies on a case-by-case basis.

### A congressional resolution?

Aggravating the confusion, 25 individual states – in addition to the US Coast Guard and US Environmental Protection Agency – have issued their own ballast water discharge regulations which can be even stricter. This has created exactly the type of inconsistent, regulatory nightmare that a uniform body of maritime law is supposed to avoid.

Currently the US domestic shipping industry is urging Congress to impose one uniform national framework for the regulation of ballast water discharges, to replace the patchwork of inconsistent regulations that now exist. We can only hope this sensible approach will appeal to elected officials.







# Refugees at Sea

## – what is covered and what is

**A considerable number of people are leaving their home countries for economic and/or political reasons. Many of these refugees end up in distress at sea aboard unseaworthy vessels, on their desperate journey in search of a better life.**



**Karoline Alfredsson**  
Claims Executive  
Team Gothenburg

There is a longstanding tradition that vessels assist when another vessel is in distress, however, putting tradition aside, there is also, based on several International Conventions, a legal obligation for the shipowner to provide assistance in distress situations at sea. The United Nations Convention on the Law of the Sea (UNCLOS), the International Convention for the Safety of Life at Sea (SOLAS) and the International Convention on Maritime Search and Rescue (SAR), among other conventions, create a framework concern-

ing the obligations of a vessel to provide assistance and disembark those rescued to a place of safety.

### **Consequences for shipowners**

The obligation to assist could have major consequences for the shipowners concerned. Refugees saved at sea may be considerable in number and could lead to significant problems and costs. Vessels trafficking the Mediterranean have, in the past, been expected to take part in Search

and Rescue (SAR) operations involving boats carrying as many as 300 refugees. Quite a few of the Club's members have already encountered these situations where they are called up by a Marine Rescue Coordination Centre (MRCC), or the relevant Coast Guard in any of the European Coastal states and are requested to participate in an SAR operation. When the boat carrying the refugees is found it is often a relatively small boat in distress, clearly not seaworthy and overloaded with refugees.

A member might well find themselves with hundreds of refugees aboard a vessel manned only by a crew of 20. Clearly, this creates an extraordinary, and potentially very dangerous, situation. The shipowner faces quite a challenge; these people have to be taken care of in the best possible way, at the same time as the security of the crew also has to be ensured.



## What costs are covered by the P&I insurance?

While the obligation to assist is clear, as are the possible criminal and civil legal consequences of failing to do so, the question concerning where the costs for the operation should fall as between a shipowner or a charterer, and/or their respective insurers, is not always as clear-cut. The constant stream of refugees coupled with the obligation to render assistance when lives are endangered, have led to many questions about what expenses should be covered by P&I insurance.

First of all, it should be stressed that only expenditure which cannot be compensated by another party will be reimbursed by the P&I insurance. Consequently, before seeking reimbursement from the Club, the member should explore the possibility of being reimbursed by the authority instructing the shipowner to take part in the SAR operations, alternatively the flag state.

## Costs for diversion – a considerable item

The most considerable item for the shipowner will, in many cases, be the costs for the diversion of the vessel in order to rescue and disembark the refugees. SAR operations in the area around the busy Mediterranean routes typically last from a few hours up to a few days, depending on the

circumstances of the individual case as well as the relevant vessel's involvement.

The member will also often have a very

limited say about where the refugees should be disembarked. Often the local authorities decide a specific port to which the vessel is ordered. This port is not always the closest one as the local authorities are aware that in some ports that neighbour the sea-lanes where refugees are frequently found, landing arrangements may be strained to the limit already.

Costs for a diversion are covered by P&I insurance if the diversion is justified and reasonably undertaken, which is typically the case when a shipowner is requested to assist by a national authority. It is however important that the member always informs the Club about the event before the vessel diverts, in order to obtain approval and advice from the Club. The diversion starts when the ship changes course to rescue refugees and ends when the vessel is reasonably back on course to its original destination.

## Additional expenses

The diversion costs that can be reimbursed include expenses for fuel, insurance, stores and provisions, as well as additional port charges attributable to the diversion and incurred as a direct consequence thereof.

Port charges include pilots and tugs as well as port dues and fees. Cover is only provided for costs in excess of those that would have been incurred had it not been for the diversion. Credit should be made for costs saved, if any.

The member may be asked to supply details of actual and calculated costs in order for the Club to establish the compensation due. A bunker calculation should be supplied together with a bunker invoice and details of the additional distance sailed. All actions should be recorded in the deck log and a log extract is required from the member to obtain compensation from the Club for expenses incurred.

Another item that is usually not as substantial as the diversion costs, but may still be considerable, are the costs that the shipowner incurs in order to manage the refugees' care and maintenance while aboard. These additional expenses will also be covered by the P&I insurance.

## Need for complementary insurance cover?

The diversion could lead to time being lost for the shipowner/charterer, however it is important to note that no compensation will be paid out under the P&I insurance for hire lost during the diversion. The Club is currently developing a cover, complementary to traditional P&I insurance, for such shortfall in revenue while the vessel isn't able to trade. Please contact the Club for further information.

## How to minimise negative consequences?

When a request has been given to the shipowner to divert the ship, the member should, in addition to immediately notifying the Club, also alert the ship agents in the port where the refugees are to be landed or appoint an agent there to take care of the formalities.

It should be noted that often when the vessel has entered port in order to disembark refugees and during the actual disembarkation, neither the Club's correspondents nor the local agents are allowed to board the vessel until the refugees have been disembarked. Instead the vessel is basi-

## KEY FACTS

In the first three-quarters of 2014, more than 3,000 people died attempting to cross the Mediterranean to Europe. They included more than 500 people who perished in a single incident in September when their boat was sunk by their human traffickers off the coast of Malta. As of mid-December 2014, over 207,000 refugees had arrived in Europe by sea. In comparison, a total of 60,000 people made the voyage in 2013. [ Source: UNHCR ]

cally seized by local authorities i.e. Harbour Master, Coastguard etc.

Consequently, correspondents and agents can't offer the Master much assistance at this stage. However, they render valuable assistance in taking the precautions necessary, before the vessel arrives, to allow a smooth disembarkation of the refugees.

Such precautions taken before the ship's arrival will ensure that the member meets his obligations and it will also speed up the procedure and minimise the delay to the vessel. They can also be on standby during the disembarkation and attend the vessel on completion of the formalities to offer any support that is needed.

## Paying party could be the shipowner or the charterer – or both

It should be noted that the starting point in this article has been that the shipowner is liable for costs. However it should be stressed that if the vessel is under a charter, the wording of the C/P will decide where the costs for the diversion, as well as other costs, will fall.

The paying party could be the shipowner or the charterer or there could be an apportionment between the two, depending on the wording of the relevant C/P. In view of the high amounts that might be involved it is important to keep this question in mind when drafting charterparties, to minimise the exposure and avoid uncertainty through clear wording.



## GUIDELINES

Useful guidelines concerning the subject can be found on the IMO's, UNHCR's and ICS's websites. Additionally, if you have any questions in relation to the above, please do not hesitate to contact the Club.

# Business as usual in terms of warranty of safety

## English Court of Appeal over



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**IN THE LAST EDITION** of Triton (No. 3-2014) we reported about charterers' risks in being uninsured; specifically in relation to safe port warranties commonly agreed to by charterers in standard charterparty agreements.

In that article we further reported about the somewhat controversial judgement<sup>1</sup> given by an English first instance court that a modern and sophisticated port in Japan was held to be unsafe since the characteristics of the port made it theoretically foreseeable that dangerous situations could occur. As a result, owners and their insurers were successful in their claim and awarded about USD 140 million.

When writing this article the decision given by the Court of Appeal is subject to further appeal to the Supreme Court and we will return to you later in Triton with the final outcome.

### A different view on the matter

On 22 January 2015 the second instance court took a different view on the matter.

Before we look closer at the second instance court's ruling<sup>2</sup> we will take a few steps back to those important days in the early autumn of 2006, that for nearly ten years have kept the parties involved occupied with the matter.

### The story started in September 2006

The facts involved are interesting and the story started in September 2006 when the Capesize bulk carrier left Saldanha Bay, South Africa, with a cargo of iron ore, ordered by the charterers to steam to and discharge at Kashima Port in Japan.

The voyage, approach and the subsequent berthing at Kashima Port went well and the discharge operation started just after berthing. However, on 24 October, due to strong winds and rain, the cargo operation had to be stopped. What then happened was very much subject to debate in the two court instances.

The facts are however that the master, due to strong winds (up to Force 9 on the Beaufort Scale) decided to depart from the berth for safety on the open sea, attempting to avoid the considerable swell by the long waves that were dangerously affecting the ship while inside the port area.



<sup>1</sup> [2013] EWHC 2199 (Comm) <sup>2</sup> [2015] EWCA Civ 16



# rrules high court judgement

PHOTO: iStockphoto

Because of the rapidly deteriorating weather the ship, while leaving the port, in gale force winds, encountered problems and in the end was driven back onto the breakwater wall, broke apart, and became a total loss.

## Several legal issues arose

Naturally several legal issues arose from this incident but the “centre of gravity”, in terms of the legal issue that had to be decided upon, was the test about what constitutes an “abnormal occurrence”, that was laid down by the Court of Appeal (later approved by the House of Lords<sup>3</sup>) in the famous case “Eastern City<sup>4</sup>”, which in the words of Sellers, LJ, is as follows:

*‘A port will not be safe unless, in the relevant period of time, a particular ship can reach it, use it and return from it without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship’.*

## The port was unsafe?

The first instance court came to the conclusion that the port was unsafe due to its characteristics; given the combination of simultaneous coincidences with gale winds and severe long swells from a specific northerly/north-easterly direction straight into the exit fairway made it dangerous or impossible for Capesize ships to leave the port. That this, theoretically, was not an abnormal occurrence for the port and that the situation could not have been avoided by good navigation and seamanship.

## The Court of Appeal took a different view on this

First of all the court mentions that the first instance had taken an excessively theoretical view of what constituted an “abnormal occurrence”. That it was incorrect to state that just because

something is theoretically foreseeable, because of the characteristics (in this case the port’s location), then it could not be an “abnormal occurrence”. Secondly that a more practical view should be taken in order to determine whether an event could be regarded as an “abnormal occurrence” or not.

In the Court of Appeal the charterers argued that now, because of the first instance court judgement (since theoretically foreseeable by the characteristics of a port), well known ports located in California, due to the earthquake risk being the characteristic of San Francisco, and Syracuse, which is close to Mount Etna with the risk of volcanic eruption and thus a characteristic of Syracuse, should be considered as unsafe ports for charterers to order their chartered ships.

The Court of Appeal, when considering whether or not the facts from Kashima on 24 October 2006 constituted an “abnormal occurrence”, clarified the approach to be taken, which was:

*‘(...) realistically and having regard to whether the event had occurred sufficiently frequently so as to become a characteristic of the port (...)’.*

In other words, facts about the past frequency of occurrences of a similar nature as that which occurred on 24 October. The court came to the conclusion that the exact event with the combination of long wave swell with north/north-easterly gale winds, which in this case resulted in the total loss of the ship at Kashima Port, was a very rare event.

As a matter of fact in the port’s 35 year history there had never been a casualty of a similar nature. The Court of Appeal thus found in favour of the charterer deciding that the events of 24 October 2006 were not, per definition, considered to make Kashima Port an unsafe port.



<sup>3</sup> Since the Constitutional Reform Act 2005 the ‘Supreme Court of the United Kingdom’

<sup>4</sup> [1958] 2 Lloyd’s Rep 127

# ARREST IS POSSIBLE W

**A recent arrest order obtained by The Swedish Club in cooperation with South African Law Firm Bowman Gilfillan, confirms that it is possible to arrest a vessel in South Africa should counter-security not be forthcoming under clause 9 of the Inter-Club New York Produce Exchange Agreement 1996, as amended in September 2011 (the ICA 2011).**

An owner or charterer, having provided security to a cargo claimant is, under clause 9 of the ICA 2011, entitled to counter-security from the other party to a charter party. This counter-security is to be given upon demand for an equivalent amount in respect of the cargo claim. The claim must have been notified within 24 months from the date the cargo was or should have been delivered and the party demanding counter-security must provide acceptable reciprocal security if asked to do so. When these requirements have been met under the ICA 2011, counter-security should be provided to the owner or charterer who provided security to the cargo claimant.

Where this seemingly straightforward arrangement agreed between the P&I Clubs in the International Group is not honoured and the counter-party for some reason does not provide the counter-security where a charter party incorporates ICA 2011, the ques-



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tion then arises whether the party seeking counter-security may instead arrest a vessel or other asset to obtain security for his claim.

## This is the background

In terms of English Law, no claim under the ICA (and thus no right to security) arose until the cargo claim had been properly settled and paid. This is as a result of the wording of Clause 4 (c) of the ICA, which requires that the claim is properly settled and paid

# Reflections on Alexandros T and Brussels Recast B

**IF YOUR POLICY CONTAINS** an English exclusive jurisdiction clause, or an arbitration clause, you expect disputes will be heard where you have agreed with the member or insured they should be heard. And where they start an action elsewhere you expect to be able to stop them from going any further.

But under the old Brussels Regulation tiebreak rule, only the court “first seised” had the right to check the clause was valid and then dismiss the action in favour of the chosen court. This often didn’t happen. Even settling a case here with a Tomlin order is not enough to prevent a later “torpedo” action in another jurisdiction.

English courts have been stymied because anti-suit injunctions are incompatible with EU law. All they can do is award an indemnity or damages for breach of the clause. It was always essential to sprint to your chosen court.

## Recast Brussels Regulation (Regulation 1215/2012)

Since 10 January the law has changed, considerably reducing the need to issue in England first. Article 31(2) of this new Regulation, replacing the old Brussels Regulation, provides that exclusive jurisdiction clauses will always trump the “first seised” rule; only the courts agreed by the parties may decide on the clause’s validity and other courts (even if first seised) can only take over if that court decides it does not have jurisdiction.

Importantly, it opens the possibility that English courts could grant injunctions to restrain proceedings in other EU courts being



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Based on a seminar presented by Philip Wareham, Jeremy Robinson and Robert Gay at Hill Dickinson on 8 January 2015

pursued in contravention of Article 31(2).

It is still essential to draft the jurisdiction clause carefully and to make sure it has been incorporated in the contract in such a way that other courts will recognise it and stay or dismiss their proceedings. It is also important that Tomlin orders should make it clear that parties may come back to enforce its terms, including obtaining indemnities or damages, and that that is not a new action.

Lord Clarke in *Alexandros T* managed to avoid the old tiebreak rule. He held the Greek actions in tort and the indemnity and damages claims in England involved different causes of action, as they were not “mirror images of one another” and found in favour of insurers. It would be easier now.

## What about arbitration clauses?

The Recast Regulation does “not affect the application of the 1958 New York Convention” – so EU courts can recognise and enforce arbitral awards under the Convention. They can refer to arbitration,



# here counter-security is not forthcoming

before a recovery can be pursued. It is thought that it is only then that a cause of action arises and an arrest becomes possible.

Prior to the 2011 amendments to the ICA, a party making a claim under the ICA could also only obtain security in South Africa by an arrest of a vessel or other assets once a cargo claim had been paid. This position was acknowledged in “The Rizcun Trader”.

It is debatable whether under English Law clause 9 of ICA 2011 has changed this position but, so far, the majority view still remains that an arrest becomes possible only when the cargo claim is paid. It has been thought that Courts in other jurisdictions may however take another view and this was confirmed by a recent arrest order granted by a South African Court.


## Arrest in South Africa

As a starting point, a South African Court may order the arrest of property as security for a claim which is, or may be, the subject of arbitration or any proceedings contemplated, pending or proceeding, within South Africa or elsewhere. South African Law does not require the arbitration to have been commenced at the time of the arrest; proceedings need only to be ‘contemplated’.

It is a further requirement that the arrestor demonstrates it has a prima facie claim, enforceable in the nominated forum, and a genu-

ine and reasonable need for security. An example of what constitutes the required prima facie claim would be the breach of a term of a charter party by the charterers, for example, which gave rise to a cargo claim and which in turn has been secured by the owner as is contemplated in clause 9 of the ICA 2011, which also must have been incorporated into the charter party.

The breach of the charterers’ obligation is what would give rise to a contemplated claim (for breach of the charter party), and for security as provided for in clause 9 of the ICA 2011. Had it not been for the cargo claim, owners need not have provided security to the cargo claimant. Accordingly, without security having to be provided for the cargo claim, there would have been no activation of clause 9 of the ICA 2011. No right to counter-security would have existed accordingly. Thus, the demand for counter-security is based on the contemplated recourse action against the counter-party under the charter party, should the innocent owner have to pay the cargo claim.

The wording of clause 9 of the ICA 2011 provides the basis for an arrest in South Africa to obtain counter-security. Clause 9 of the ICA 2011 is a promise to provide counter-security upon certain requirements being met. A refusal to do so creates both the prima facie claim for such security and probable cause for a genuine and reasonable need for such security. 

# OTH TOTAL LOSSES?

stay or dismiss the action, or examine if the clause is void, inoperative or incapable of being performed under its law (but such ruling is not enforceable as a judgment under the Brussels rules). If they find a clause invalid, however, they can rule on the substance and their ruling must be recognised and enforced elsewhere in the EU.

## Better or worse?

Apart from the above, the Recast Regulation hardly makes any changes other than simplifying and speeding up the cross-border recognition and enforcement of judgments. However, the changes significantly improve the chance that English courts cannot have the rug pulled from under them when there is an English jurisdiction clause, and make the relationship between the EU and New York rules much clearer for arbitration clauses.


## Nevertheless, several issues remain unresolved

- ▶ A recent French court ruling casts doubt on whether a one-sided jurisdiction clause to the benefit of only one side (as commonly found in banking agreements) is effective;
- ▶ Lord Clarke’s “mirror” analogy won’t necessarily be followed elsewhere;
- ▶ Other courts might not follow the English courts in distinguishing orders for damages from anti-suit injunctions;

- ▶ Other courts can still interpret a jurisdiction clause as not covering tortious actions or not compliant with domestic signature rules and thus sidestep the obligation to stay;
- ▶ There may still be a race on to enforce an arbitration clause against a defendant elsewhere in the EU as there is no point in enforcing an arbitral award under the New York rules once another court has already found invalidity and given judgment on the substance.
- ▶ Could one apply for a declaration of validity in England first?

## Conclusion

The *Alexandros T* may have been a total loss, but in the end it was not a loss for the insurers despite the torpedo that hit them from Greece. The Recast Regulation offers two welcome improvements for parties wishing to enforce agreed jurisdiction or arbitration clauses: greater recognition for exclusive jurisdiction clauses and a much needed clarification of the relationship between the Regulation and the New York Convention for arbitration clauses.

The battle on anti-suit injunctions was lost long ago but, so long as the CJEU does not rule otherwise, English courts will entertain a damages action against a party that breaks the clause. However, one lesson is clear: such clauses need careful drafting, as do settlement orders. 

# Clausing the bill of lading

## Scenario 1

The vessel notes all sorts of miscellaneous foreign material being loaded along with the bulk cargo: bits of sacking, sometimes a whole bag of cargo, random pieces of material, the odd stone and bicycle tyre. The Master intends to clause the bill of lading to reflect this. Can he?



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## Scenario 2

Throughout loading the shippers have complained the cargo is off-spec, accusing the vessel of having contaminated it. From the various test results presented during loading, the Master knows that this cannot be the case and he intends to clause the bill of lading. Can he?



**Martyn Hughes**  
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## ANSWER

**“Yes”, in both cases, surely? But is the answer as obvious as it first appears?**

**THE FIRST SCENARIO** is perhaps the easier to deal with. The foreign matter is there for all to see and any vessel ‘worth its salt’ will have taken a comprehensive set of photos to support its concerns. It is then a question of degree. Is it more foreign material than you would normally expect in this type of cargo loaded from this port? If so, then the bill of lading should be claused. The foreign material might cause damage to the unloading facilities; it might simply be more than the buyer/cargo receiver expects to be included with the cargo.

If the Master has no prior experience of this particular cargo or the load port, allowing him to assess the situation, he should call on his P&I club and the local correspondent to assist him. Under English law the Master is allowed a reasonable time in which to determine whether or not to clause the bill of lading.

**THE SECOND SCENARIO**, where the cargo is a bulk liquid, is not so easily resolved. It goes without saying that proper manifold samples are absolutely vital to protect the vessel’s position. Any suggestion from the Terminal that such samples don’t need to or cannot be taken should immediately set alarm bells ringing. A proper set of regularly taken manifold samples might be the only evidence the vessel has to establish the condition and nature of the cargo on loading. Then, if contaminated or off-spec cargo is loaded, the vessel can establish this by having these load port samples analysed.

### Is the fact that the cargo is off-spec the determining factor?

Whether the cargo is off spec or contaminated before loading may not even be known when the bill of lading is signed. Unless the Master can tell for example from the samples taken during loading that the vessel has not loaded the cargo described on the bill of lading, he cannot clause the bill of lading. To take an extreme example, if the samples look like clear water, he cannot sign a bill of

lading stating a cargo of fuel oil has been shipped.

However, if the samples appear to be fuel oil, but the Master has been put on notice that the cargo may be off-spec (invariably accompanied by accusations that the vessel is responsible) he may only clause the bill of lading if the cargo is inaccurately described on the bill of lading.

So, if the bill of lading states simply ‘fuel oil’, the bill of lading cannot be claused unless there are concerns the cargo loaded cannot accurately be described as fuel oil. For example, if the flash point is known to be outside the parameters for the product the industry recognises as fuel oil. So, unless the bill of lading is more specific in the way it describes the cargo no clause can be inserted, even where it is known to be off-spec. However, if the bill of lading states “Fuel Oil, flash point 70C” and the Master understands the cargo loaded to have a flash point of only 65C, then he can and, indeed, should clause the bill of lading. In short, the bill of lading cannot be claused unless the off spec aspect takes it outside the terms of the bill of lading description. That may not be the answer the Master expects.

### What is the Master's obligation?

The Master’s obligation is to sign a bill of lading stating the apparent condition of the cargo as shipped on board. If the cargo comes on board clean/undamaged but is damaged whilst on board and before the bill of lading is signed, the undamaged condition of the cargo, as loaded, must be stated. At most, English law permits the Master to add a note on the bill of lading to reflect the damage done after loading. For example, a remark to explain that a portion of the cargo has been destroyed by fire and/or damaged by fire extinguishing water. Such bills although annotated would still be considered ‘clean’ and not claused.

So, the more generic and non-specific the description of the cargo, the less scope there is for the Master to legitimately insist on clausing the bill of lading. This appears to be contra-intuitive: sure-





ly, if there is something wrong/off spec with the cargo, the Master is obliged to clause the bill of lading to reflect this. Otherwise, won't he be prejudicing his P&I cover and conspiring to defraud any innocent third party holder of the bill of lading?

The answer, however, as seen above, is not always 'yes, clause the bill'.

#### **Does the bill misdescribe the cargo?**

Invariably, there will be a Mexican stand-off where the Master insists on clausing and the Shippers/Charterers refuse, perhaps citing the Master's obligation to sign bills of lading as presented. Such an obligation, even if expressly stated in the governing charterparty,

does not prevent the Master from clausing a bill of lading that inaccurately describes the cargo. The decisive point is just that: does the bill of lading inaccurately describe the cargo? It may not do so because it uses only generic terms. In that case, it must be signed without clausing.

#### **Conclusion**

The Master is allowed a reasonable time to consider his options. We suggest he contacts his P&I Club straight away. The answer he gets may not always be the one he is expecting.



# New low sulphur emissions in ECAs

# Owners' du

**MARPOL ANNEX VI** aims to reduce air pollution from a vessel's exhaust gasses. In particular, Regulation 14 states that ships trading in Emission Control Areas (ECAs) have to use fuel oil with a sulphur content of no more than 0.1% from 1 January 2015.

The established ECAs are the Baltic Sea, North Sea, North American Coastline and US Caribbean. The idea of introducing such a requirement has been known for quite some time, but in the current difficult market, some owners have not prepared their vessels accordingly, thus facing the risk of significant penalties.



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## Current situation and position of owners

The compliance problem for owners is twofold, depending on whether they or their time charterers are providing the fuel. For owners paying for their own bunkers, the question is which type of ULSFO (ECA-compliant fuel) is the most economical solution depending on the circumstances and the required investment. In this case, non-compliance will most probably result in costly fines, with the owners having only limited defences at their disposal.

The issue is however more complicated for owners with vessels in time charter where charterers provide the bunkers. The question is then whether owners have done enough to comply with their charterparty obligations. To what extent owners have to comply with the regulation in cases where there is limited or no capacity for ECA-compliant fuel tanks on the vessel? Does the obligation under the MARPOL extend to retrofitting or making physical modifications to the vessel?

## Obligations under the time charters

Under the time charters there is a general obligation on charterers to provide fuels that are suitable for the engines fitted. Does this obligation "protect" owners and allow them to keep burning the already existing fuels? Can ULSFO be rejected because extraordinary steps need to be taken in order to burn it? Can it then be argued that this fuel is not suitable as described in the charterparty? The answer is no.

## Owners are obliged to make all necessary modifications

Owners are invariably obliged to provide "at the date of delivery and throughout the charterparty" a vessel that is "in every way fit-

ted for the service" (see the NYPE and SHELLTIME 4 form for example). Accordingly, a vessel that cannot burn ECA-compliant fuel is not fit for trading on a worldwide scale and cannot follow Charterers' orders to proceed into any of the ECAs. Owners will then find themselves in breach and liable to pay damages. So, owners are obliged to make all necessary modifications to the ship (re-structuring pipes, extensive cleaning of current HFO tanks, etc) so that she can burn ULSFO, thus rendering her again fit for service.

There have been theoretical discussions about whether an owner's duty to provide a vessel fit for service "at the date of delivery and throughout the charter period" is considered absolute and continuing no matter what happens during the charter. It is thought by many that this would involve owners in obligations much higher than those taken on when they signed the charter, or than the normal obligation to "exercise due diligence to maintain or restore the ship". However this was not the view taken by the English Courts.

## Recent case law

In "The Elli and The Frixos" both vessels were single-hulled, as opposed to the new MARPOL regulation, which required that fuel oil could only be carried in double-hulled vessels. The Court of Appeal held that the wording of the clause 1g) of the Shelltime 4 Form should take precedence, therefore "the ship shall have on board all certificates and documents required from time to time by any applicable law" – and not only at the date of delivery, as it is stated in the headline. Based on this reasoning, there are indications that owners are obliged to alter the vessel and make such modifications as are necessary in order to comply with changing regulations. It remains to be seen whether the case will be followed also in the future.

## IMO expects owners to comply

It is worth noting that some shipping companies have managed to receive funding from the European Union in order to make the necessary changes to their vessels. At the end of the day, IMO expects owners to comply. Although the question of who should bear the costs for such modifications to the vessel does not have a straightforward answer, it is likely that the responsibility will rest with the owners; the vessel has to comply with international regulations and inevitably any fine will be addressed to the ship.





# ties



*Emission Control Areas: the Baltic Sea, North Sea, North American Coastline and US Caribbean.*



PHOTO: iStockphoto

# Using hybrid fuels for ECA-SOx

## Operational guidance for shipowners

With permission from **Lloyd's Register EMEA**, we are pleased to provide our readers with an extract from the publication "Using hybrid fuels for ECA-SOx compliance". The publication in full is available at <http://www.lr.org/en/marine/consulting/fobas/>

**The revised MARPOL Annex VI regulations limit the sulphur content of bunker fuels used in emission control areas for SOx (ECA-SOx) to 0.10% m/m from 1 January 2015. Although there are alternative methods of compliance, such as alternative fuels (liquefied natural gas, methanol, bio-fuels) and abatement technologies (exhaust gas cleaning systems), their viability is still undermined by logistical, technological, and sustainability factors. Currently, only a few options are mature enough to fully replace residual fuels for main propulsion, so most ships will inevitably opt for distillates – marine gas oil and marine diesel oil – at least for now.**

For ships operating both inside and outside ECA-SOx, this will represent a major change from existing practice, both in terms of the different characteristics of residual and distillate fuel oils and the increased sulphur differential between them.

In an attempt to minimise the operational risks of running ships on distillates, several oil companies have made announcements in recent months regarding new 'hybrid' fuels designed to help shipowners navigate the upcoming entry into force of the 0.10% sulphur cap in ECA-SOx. Table that shows the different grades that have been announced publically in the media, see <http://www.lr.org/en/marine/consulting/fobas/>

Although these new fuel types are designed to minimise the complexities of operation on distillates, their characteristics (particularly the fact that they are blended products of different refinery streams) mean they present specific challenges. This guidance details the available specifications of all such hybrid fuels and details any associated risks in order to assist you in choosing the best option for your vessels.

### Storage and handling hybrid fuels on board

Most of the new hybrid fuels are blended products and have some characteristics of distillate products. This

means they may exert a 'cleaning' action, mobilising previously deposited asphaltenic material, potentially leading to increased filter loading and other operational issues. It is therefore recommended that fuel tanks which will carry these new fuel types are cleaned or at least cleared of the 'unpumpables' at the tank bottom.

Despite their distillate characteristics, most of these hybrid fuels are particularly waxy in nature, as exhibited by their pour point (the lowest temperature at which a fuel will continue to flow). These fuels therefore need to be stored and handled in systems with heating arrangements should not be stored in tanks which are subject to low external temperatures, such as a ship's side tanks. Even in tanks with heating coils that maintain the bulk of the fuel as liquid, the formation and then breakaway of material at the cold interface could result in operational problems.

These fuels will also need to be purified, taking into account their density (gravity disc selection) and viscosity for optimised preheat. Based on the tested viscosity and density of the fuels, the purifier manufacturer's recommendations should be followed for the correct operational adjustments.

### Viscosity and lubricity

Viscosity and lubricity are two of the key challenges that the new hybrid fuels aim to address. When changing over from residual fuel oil to distillates, viscosity has to be carefully controlled (along with the fuel temperature and the risk of thermal shock) in order to maintain sufficient hydrodynamic lubrication film between the moving surfaces of the fuel pump and injectors.

The new hybrid fuels have good lubricity values and comparatively high viscosities. Therefore, at normal engine room ambient temperatures, they will maintain hydrodynamic film lubrication, eliminating the need for any fuel coolers or chillers.

Their high viscosity, however, does mean that some heating will still be required (as with residual fuel oil) to bring the viscosities in line with the engine manufacturer's limit. The manufacturers' typical viscosity values vary considerably; therefore it is critically important to use the tested viscosity of the fuel for treatment and combustion purposes

# CA-SOx compliance

## ners and operators

### Compatibility and stability

Availability and compatibility with other fuels are critical things to consider when dealing with new hybrid fuel types. The fuel tanks taking on these fuels must be as empty as possible and a compatibility test must be carried out before any attempt is made to mix hybrid fuels with standard fuels.

Because of their waxy nature, there is a high risk of incompatibility between hybrid fuels and conventional residual fuel oil. Provided that the mixed proportions are at a low ratio, serious issues should not be expected; as always, minimising the quantities involved is a good policy. As standard practice, the fuel should be passed through the ship's treatment system (purifiers) before use, which means that the fuel will be passed to the settling tank first. Consequently, if a conventional residual fuel has previously been used, the changeover to hybrid fuel must be properly managed and monitored, and should be undertaken in a low-risk location.

The specification values for sediments and oxidation stability (where applicable) have been found to be low for the new hybrid fuels. However, it should be verified whether there will be any deterioration of the fuel over time or due to extended heating.

During changeover, it is inevitable that the hybrid fuels will be mixed with the fuels already in the system, so the risk of incompatibility still exists. However, because this risk can be fairly accurately predicted (even through onboard tests) and will only occur at the interface between the two fuels, it can be dealt with by closely monitoring the situation.

### Combustion

As hybrid fuels are mainly blended products, the Calculated carbon Aromaticity index (CCAI) value may not reflect the true ignition and combustion characteristics of the fuel. If not provided by the fuel supplier, further information regarding the combustion characteristics of such fuels, for example through a 'FIA100/FCA' test data, should be sought for further consideration.

Also, the usual relationships used for viscosity index may not be as exact; therefore, the correct injection viscosity should be maintained to achieve efficient combustion.

### Changeover procedure

Changeover from residual fuels to distillates and continuous operation of engines on low-viscosity distillates are two challenges that the new hybrid fuels aim to address.

Hybrid fuels have a high enough viscosity to tolerate the temperature fluctuations within the fuel system during changeover,

without going below the minimum viscosity requirement. Care still needs to be taken; if temperatures and corresponding viscosities are not controlled correctly, pump seizure may occur, potentially leading to loss of power – a commonly reported fuel-related problem during changeovers to distillates.

Depending on the hybrid fuel the ship is using, the vessel crew will also need to be cautious about sudden temperature change to avoid any risk of thermal shock, especially when changing over to 0.10% sulphur products. The change of temperature gradient should not be more than 2° C per minute as any sudden changes in temperature can thermally load fuel pumps and/or injectors and cause them to seize.

Because these fuels have solvency and cleaning effects, just like regular distillate fuels, they also tend to carry any sludge and sediments accumulated in the fuel system tanks and pipelines, leading to higher levels of sludge deposition in the early stages of changeover. Attention should be given to the rate of filter blocking during the changeover process.

### Availability

Availability is an important consideration when using new fuels. It should be ensured that the same product is available in all ports the vessel is calling at, based on the ship's operating profile. It should also be ensured that the vessel can load and store the right quantity on board to complete its ECA voyage so that no other fuels are needed, thereby avoiding compatibility issues.

### Procurement

Although the new hybrid fuel types are produced to meet the 0.10% sulphur regulation for use within ECA-SOx, they are complex blends that don't fit into either the 'table 1' or 'table 2' grades of the ISO 8217 standard.

However, it is strongly recommended that new hybrid fuel types are still ordered against the ISO 8217 specification. This can still be applied, as hybrid fuels are petroleum-derived products. The benefit of using ISO 8217 lies principally in the 'general requirements' aspects contained in section 5 of the standard.





# How to navigate away from claims

**Poor lookout and a lack of situational awareness are likely to continue to be the main causes of navigational claims.**

**How can a manager ensure that officers actually do look out of the window, plot traffic, don't agree on passing arrangements over the VHF, have a lookout on the bridge, follow the agreed passage plan, and that the bridge team actually communicates with each other?**

It seems that many navigational claims occur due to procedures not being properly followed by crew members, and officers not communicating properly with each other. In addition, poor communication between vessels and bridge team members, as well as a lack of situational awareness, all play a part.

The Club's recently issued report, "Navigational Claims", also stresses that implementing an effective training programme for officers is vital.

Half of the costs of hull and machinery claims handled by the Club have arisen due to navigational errors – a figure that has remained steady over recent years despite improved technology and the widespread implementation of SMS (Safety Management Systems).

## Implementing procedures

When sailing in congested waters, dense traffic, or close to land, risks increase. To be prepared, it is imperative that the Officer on Watch (OOV) is aware of errors and the limits of his navigation equipment. Making assumptions about information displayed and being complacent by not verifying the information, contributes to accidents.

We can see that many navigational claims happen because the manager's procedures have been ignored. If they had been followed, most likely the accident could have been prevented and would have saved costs, the environment and sometimes even lives.



**Joakim Enström**  
Loss Prevention Officer



However, it is essential that procedures are there for a reason – not just to comply with regulations. Managers need to ensure that Superintendents and safety departments inspect and verify that the correct action is implemented and followed, and if an accident has occurred identify why the procedures were not followed.

There should always be a number of officers on the bridge during critical operations; then the chance of detecting a mistake is higher and thereby it's more likely to be rectified in time.

## The following issues are still recurring:

1. Poor lookout
2. Lack of situational awareness
3. Complacency

## Safety culture is key

The main reason why casualties occur is a problem with the safety culture. This can be because it is not clearly or properly defined. It might be stated in the Safety Management System, but for some reason is not followed onboard or shore-side.

In all casualties shown in our report, communication somehow failed. If the bridge team does not communicate effectively with each other it will just be a couple of individuals on the bridge doing their separate jobs.

A small error can lead to disaster on a vessel. An important tool for ensuring the crew communicate with each other is Maritime Resource Management (MRM). To reap the benefits of MRM it is best if the entire organisation is trained in these principles. The manager should focus on having a culture onboard which encourages the crew to be assertive. The importance of following procedures should be emphasized during training, in newsletters and evaluations. They should also be verified during internal audits, which are effective at identifying areas to focus on.



## Suggested preventative measures

- ▶ Have a detailed Navigation policy which includes descriptions and suggested settings for the bridge equipment
- ▶ Carry out a thorough audit of the navigation policy during the internal audit
- ▶ Implement a specific navigational audit
- ▶ The Master needs to understand the consequences of not following procedures. It should be clearly defined what the consequences are if the procedures have not been followed
- ▶ All crew members should be accountable for their own actions
- ▶ The superintendent in cooperation with the Master has to ensure that the vessel has proper charts and other essential information for the vessel to complete the voyage safely

- ▶ Have detailed familiarisation procedures which also verify that the officers have sufficient knowledge after completion

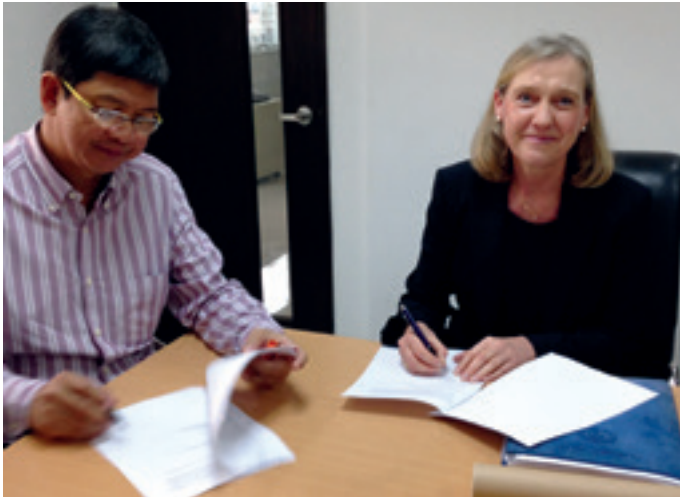
More suggested preventative measures can be found in the publication Navigational Claims.

## Many navigational claims are caused due to loss of engine power, which emphasises:

- ▶ importance of following manufacturer's instructions
- ▶ only use original spare parts
- ▶ complete maintenance as required
- ▶ make sure to check that all steering is fully operational before entering or leaving port.

Read more on navigational claims in the publication on our website: [www.swedishclub.com](http://www.swedishclub.com)





*Birgitta Hed signing the Agreement with Dr Antonio Roberto M. Abaya*



*...and with Dr Glennda E. Canlas.*

# PEME Agreements renewed

**IN THE AUTUMN** of 2014 it was time to again review and negotiate the PEME Agreements with the two clinics with whom we work in the Philippines. During a visit to Manila in November, the relevant clinics were audited and visits were scheduled to see some other clinics as part of the quality programme in place to safeguard the best interests of our members utilizing the facility and service provided by The Swedish Club. The medical audit was done in co-operation with our designated medical expert Nigel Griffiths of The Marine Advisory Medical & Repatriation Service.

One other clinic of particular interest was visited and in the near future we will decide if a third clinic should be included in The Swedish Club's PEME (Pre Engagement Medical Examination) scheme in Manila, or whether it is more justified to add a clinic in Cebu or Iloilo which may be more convenient to many seafarers.

## Agreements now in place valid up to 31 December 2016

We are pleased to advise that the PEME scheme will continue as before and that we were able to agree on the price of the PEME being kept at the same level.

Some amendments of medical importance were also agreed and the Designated Medical Examiner's Handbook setting out the requirements and conditions for compliance established by The Swedish Club has been revised to reflect that position. The Agreements now in place are valid up to 31 December 2016.

## Significant increase in the number and value of claims related to illness a major concern

As a Club we have seen a significant increase in the number and value of claims related to illness, which is of major concern. It is a concern and trend that we share with many Clubs in the International Group (IG) and we are currently looking into the possible reasons behind the relevant increase. Our Loss Prevention Department is needless to say also involved and engaged in this process. A new P&I Claims Analysis will be published later this spring referring, among other topics, to the noted increase relating to illness and injury claims on a worldwide basis.



**Birgitta Hed**  
Senior Claims Manager, P&I  
Team Gothenburg

In this process we are strongly recommending our members to utilize the PEME scheme currently available in Manila, but also to carefully go through the PEME programme used in other parts of the world and further discuss the potentially increasing problem with the local manning agents or crew managers involved in recommending certain clinics.

One slightly controversial but important question that needs to be addressed is whether some manning agents are reluctant to send all potential seafarers for an enhanced PEME, or whether they in their own interest send some crew members that they suspect may not pass an enhanced PEME to a different and less rigorous clinic applying a more basic PEME.

We are presently unable to make medical recommendations out of the Philippines since to do so we would need to have a quality programme in place like the one we presently have in Manila. To simply recommend clinics on the word of a correspondent or manning agent is not something we are prepared to do.



## OUR DESIGNATED CLINICS IN MANILA

### Halcyon Marine Healthcare Systems

Dr Glennda E. Canlas, Medical Director  
[www.halcyonmarine.com.ph](http://www.halcyonmarine.com.ph)

### Health Metrics Inc.

Dr Antonio Roberto M. Abaya, Medical Director  
[www.healthmetrics.com.ph](http://www.healthmetrics.com.ph)

Complete contact details to the clinics can be found on our website [www.swedishclub.com](http://www.swedishclub.com) under the section Loss Prevention/Service/PEME

Please do not hesitate to contact us in case you have any questions or wish to discuss our PEME scheme further. You are also welcome to contact the above clinics on a direct basis, or through your manning agents.

We are here to assist you and are very happy to do so.

# DNV GL A CLASS ACT



Tore Forsmo  
Area Manager  
Team Norway

**The merger between Det Norske Veritas and Germanischer Lloyd has created the world's leading classification society – the DNV GL Group. This new entity classes approximately 21% of the world tonnage. Tor E. Svensen is CEO of DNV GL – Maritime and in this interview he shares his thoughts on both container vessels and the future challenges for international shipping.**

*With the merger between DNV and GL you are now the largest class society within the container vessel segment, yet at the same time there are obvious challenges going forward. The new mega boxships are reaching the 20,000 TEU milestone (and possibly beyond) while at the same time the safety of container vessels can be questioned with the MOL Comfort breaking up in 2013 with the hull girder collapsing and the MSC Napoli deliberately stranded in 2007 for similar reasons. What have we learned from these two incidents and how has class acted to ensure that the safety and structural integrity of these ships are well taken care of in the future?*

**Svensen:** Both these two accidents have had and will continue to have a profound impact on containership safety. With the MSC Napoli, which was a class entry (i.e. built to another class and then taken over by DNV) buckling stiffness was the main issue and I believe that the way both the accident investigation was carried out by MAIB of the UK under full transparency, our own structural analysis and the communication towards IACS with recommendations for strengthening of sister ships or similar built vessels can

be seen as exemplary and contributed greatly to a better risk understanding and substantially reduced the probability of something similar happening again. In the case of MOL Comfort I have previously stated that her design would never have been accepted by DNV GL and I remain firm on that position.

The official accident investigation report has just been released and this correctly points at inadequate strength of the double bottom as the primary cause. This was also our conclusion based upon our own analysis of the available information. The report also asks for classification rules on structural strength of large containerships to be amended. Our own rules have all the additional requirements mentioned in the report already incorporated for a long time and in this respect, there is nothing new in the investigation report.

Positive collaboration has also taken place within IACS after the MOL Comfort accident and, as announced more than a year ago, IACS will release new Unified Requirements addressing large containerships. These new requirements will ensure that the rules of all IACS societies are brought up to a certain minimum level so as to ensure that the structural integrity of these large containerships will not be at risk in the future, if it will be followed by all societies.

*DNV GL has recently stated that boxships of 24,000 TEU are feasible but perhaps not practical or commercially interesting and that we are slowly approaching a limit in ship size development. What do you believe will be the ultimate limiting factors in boxship design – the risk and safety perspective or the commercial perspective?*

**Svensen:** I think that the commercial perspective will be the ultimate limiting factor for container vessels. We have seen that up to approximately 22,500 TEU we can push the existing envelope by playing around with the main dimensions. For post-22,500 TEU,

↳ continues on page 30



### **Tor E. Svensen**

CEO of DNV GL Maritime.

Prior to that, Svensen was the President of DNV Maritime, Oil and Gas.

Svensen joined DNV in 1993 as Head of Section for Environmental Loads. In 1996 he became a Regional Manager, based in Singapore and responsible for all DNV activities in South East Asia. In 2000 he was appointed Technical Director and over the period 2003 to 2010 was Chief Operating Officer of DNV Maritime with responsibility for Classification and all other DNV maritime activities worldwide. From 2010 to 2012, he was President and Deputy CEO of DNV. From April 2012, following the re-organisation of DNV into three separate operational companies, he became President of DNV Maritime and Oil & Gas. In the period 2007-2008, he was also Chairman of IACS, the International Association of Classification Societies.



## DNV GL – A CLASS ACT

↳ continued from page 28

a total redesign with a new structural layout is probably necessary, but the real question is whether the shoreside/hinterland logistics (e.g. container storage capacity and rotation time, crane & truck capacity, lay time for loading/unloading) would become too complex for this to have commercial interest. Technical and safety issues will not in my opinion create any limitations on size yet.

*To move slightly away from boxships and more to general safety concerns, you have advocated the need for transparent casualty investigations and a change of mindset to emphasize preventative and mitigating barriers to manage risk. How do you propose to go about creating this change of mindset?*

**Svensen:** We must be able to learn more, learn better and learn quicker from reported accidents and focus on underlying causes. The most effective way is of course that all available information is shared on a voluntary basis by flag states, classification societies, shipowners, marine insurers, industry organizations and other relevant parties without negative repercussions such as legal actions or threats of criminalization of individuals.

Just ensuring that flag states actually do what they have agreed to do under the various IMO conventions would be a good start. It seems to me that public casualty investigations could be done more uniformly, coordinated and transparent than is currently the case. I believe we also have to use more risk-based approaches and we need to adopt the idea to build barriers against technical and human failure. This may include building more redundancy into critical systems and functions in the ships and their operation. If we know that a critical failure will have large consequences, then we for example ensure that the consequences of failure are reduced by having a back-up.

*Looking ahead, DNV GL published last year the report “The Future of Shipping” where you look at issues such as sustainability, safety, design, connectivity, materials, operations and energy. In terms of automation, you stated at last year’s Posidonia that shipping can draw lessons from the offshore industry. Don’t you think that shipping can learn just as much from the automotive industry? After all many of the innovations we are discussing in shipping are just as much issues for car manufacturers, city planners and infrastructure developers?*

**Svensen:** I believe that shipping has come a long way compared with 20 to 30 years ago and the number of serious accidents and fatalities has been significantly reduced. Saying that, our society today

has an expectation to zero fatalities and no accidental pollution. I think that both in terms of safety and the environment, there are a lot of ongoing activities in most transport industries that shipping can learn from. The current crew fatality rate in shipping is ten times higher than for OECD industry workers. Consequently, we need to focus on reducing fatalities further and a 90 per cent target for reduction is a realistic long-term ambition.

If you look at the car manufacturer Volvo, their ambition is no serious injuries or fatalities in a new Volvo by 2020. We as an industry should be equally bold in setting our own visions and objectives. The environment is of particular concern and we need to reduce our CO2 emissions by 60 percent below present levels by 2050. New technologies and processes such as fuel cells, hybrids, autonomous vehicles, nano-materials, batteries, collision prevention, Internet connectivity, Big Data analysis are topics that “everybody” is working on and perhaps a cross-industry and cross-disciplinary approach would be of mutual benefit to us all?

*Your research activities focus on safer – smarter – greener. Where do you think we’ll see the major innovations in the next 10 to 20 years? In ship design (including propulsion) or in ship operation?*

**Svensen:** I think many of the innovations we’ll see in the near future will be typical process innovations benefiting the operational side of shipping. We’ll probably see remote monitoring and process control to improve and enhance decision support systems on board. I mentioned Big Data becoming increasingly important in ship operations and our own ECO Insight tool is just a start where a large variety of shipboard data and real-time data from other sources are combined for continuous fleet performance management to optimize the vessels operation.

Obvious challenges with Big Data are typically which data are relevant and which are not, who owns the data and who may use the data. Perhaps the seafarer profession as we traditionally know it will be redefined in a more systems operations direction?

In terms of ship safety and accidents causality, we have traditionally spoken of the 80/20 division between operational errors by humans and faulty technical solutions and designs. I think today we’re probably closer to 90/10 and to emphasize technical and design issues further will perhaps be chasing diminishing returns. There are probably bigger crops to be reaped from focusing on human beings and operational issues, but new technology will be a big factor in bringing us towards our targets.



Operating in more than 100 countries with a staff of 16,000 professionals, DNV GL is the world’s largest classification society with some 13,175 ships on its books amounting to 265.4 million gross tons (gt). Headquarters are located at Høvik, just outside Oslo, and its Maritime business run from Hamburg.

Germany thus constitutes DNV GL’s single biggest market with approximately 70% of the country’s 3,580 ships under its class and more than 80% containerships.

DNV GL is also responsible for the classification of approximately 63% of the world’s container ships measured by gross tons.

# NEWS from ▶▶ Team **Gothenburg** ▶▶ Team **Piraeus**



## Team Gothenburg

**Jacob Viero**  
Acting Area Manager

**A SMART, PROVEN TASK** in controlled growth is to cycle the growth with consolidation. New members and their organizations need to blend with ours in order to safeguard smooth operations in future. So maintaining a growth policy and wise diversification theme, Team Gothenburg has eased a little bit off the accelerator. Time is spent in enforcing what we do well and to constantly qualify assure our internal processes. Admittedly this sounds both a bit dull and lazy, but I can assure you that it is quite the opposite. Potentially one of the most exciting things we do now is test our sea legs. My colleagues involved in both underwriting and claims handling need to spend time onboard vessels to better or fully understand the mechanics of things, as well the structural and cultural core of operational shipping – ships. This ongoing project has been appreciated by our new sailors and the supporting shipping companies, and I would like to offer my personal thanks to the ships and crews taking my colleagues onboard.

On shore things keep developing as well. In the previous edition of Triton I described a change in our underwriting organization to

Area Manager Jacob Viero heads Team Gothenburg, which is responsible for the Scandinavian and Northern European markets, as well as North and South America.

include travelling underwriters with pronounced account responsibilities. To support this member-focused approach we have created an in-house support team working closely with the travelling underwriters in matters leading up to new and renewed business, as well as the administrative tasks following a written risk. This development of the organization has now settled and the team is now able to spend more time with our members and brokers and still ensure the documentation service we are renowned for.

Seeing our members and business partners on-shore and at sea and consolidating team and business did not prevent the team developing in size and diversification. H&M renewal at the New Year and the bigger P&I renewal in February produced more members and tonnage to the team. We are especially proud of converting hull follow accounts to lead accounts where the Club merits are displayed in a more obvious fashion than when only playing a mere capacity role. The P&I renewal produced new members and in a designed static P&I sphere this is another testament to the Club's and the team's reputation on the market.

From our team perspective, we have seen particularly active shipping and managing companies in countries such as Germany and Turkey. These two countries along with 7 more are the traditional strongholds of Team Gothenburg and with our new organization in place we can, and will, be more active and visible on these mainly European markets. As part of our presence we are currently planning our Club luncheons and Club evenings with the main markets. These events will be described in future issues of Triton.

I would like to announce that this Triton will be the last one seeing Benny Johansson amongst the Club's employees. Benny leaves us to enjoy a well-deserved retirement.



## Team Piraeus

**Hans Filipsson**  
Area Manager

**OUR FIRST OFFICE** in Piraeus was established in 1980. Today we are located at "87 Akti Miaouli" and have 17 staff, all dedicated to serving our members.

We are growing in both Marine and P&I. The P&I portfolio is now very close to 12 million GT and we are seeing steady growth in this market. The growth in P&I is about 20% since June 2014.

Shipowners, especially the bulkier owners, are still struggling with very low freight rates. In February the freight index for bulkers went below the 1986 index. However, second-hand bulkers are now very cheap and maybe it is the perfect time to buy? We are see-

Hans Filipsson is Area Manager for Team Piraeus, responsible for the markets in Greece, Italy, and the Middle East. The Swedish Club has been present in Piraeus since 1980.

ing a lot of activity in the S&P market so obviously there are some shipowners investing for the future. The freight rates will improve, but the million-dollar question is when?

The New Year started off with a re-election here in Greece. A legislative election took place in Greece on 25 January 2015 to elect all 300 members to the Hellenic Parliament according to the constitution. The election was held earlier than scheduled due to the failure of the Greek parliament to elect a new president on 29 December 2014. The left-wing party Syriza won the election for the first time ever, securing 149 of the 300 seats in Parliament.

Whether this new government will be successful or not is very difficult to say. There are many question marks and worries, not only among shipowners. Some people say that nothing will change and that there might be a new election before the end of this year. We will see.

It has been a very long, cold winter including several snow falls here in Athens. The winter is now behind us, and hopefully the financial turmoil and depressed freight rates will also be behind us sooner rather than later. Now we are looking forward to Easter and that will be the kick-start for the summer.

Wishing you all a good portion of sunshine.

Kalo Kalokeri



## Project “Marinification” – sea training programme for office employees at The Swedish Club



Anna Fjaervoll, Assistant Underwriter, Team Gothenburg signed on the M/V Tellus.

# “Now we are more humble about the work

**The Swedish Club set out on a mission to train their younger staff by letting them go on board members’ vessels to experience the real world of shipping out at sea. Anna Fjaervoll and Oscar Holmqvist boarded two different Sirius Shipping vessels, the M/V Nimbus and the M/V Tellus, two tankers operating in Northern Europe.**

The main reasons for letting employees go to sea is to train the non-nautical staff and strengthen in-house expertise and to get a feeling of and understand the general day-to-day work on board a cargo ship; how the watches work, all the maintenance work that has to be done by the crew members, the time aspect where schedules are disrupted due to unexpected circumstances that affect commercial operations etc.



**M/V Tellus**  
Owner: Sirius Shipping  
Built: 2006  
Length: 124,50 m  
Gross tonnage: 7,515  
Flag: Danish.

*The M/V Tellus from Porvoo, Finland, heading towards Västerås, Sweden, for discharge.*

We would really like to thank our members who helped us undertake this project by letting our colleagues on board their ships. At the time of writing The Swedish Club’s sea trainees have sailed with Sirius Shipping, Harren & Partner, Wallenius Lines AB and Rederi AB Donsötank.

### Anna Fjaervoll

Assistant Underwriter, Team Gothenburg

“ **I SIGNED** on the M/V Tellus on 3 December 2014 in Porvoo, Finland where I met up with three other crew members who were also signing on the same day.

I got to experience lying at anchor outside Porvoo.

The waiting was quite long since the schedule changed due to some cargo being off-spec for a vessel that was loading in port and therefore the Tellus had to wait for its turn at anchor. While the vessel was at anchor the crew had the chance to carry out different types of maintenance work that could be difficult to do when in port or at sea.

When starting to navigate from Porvoo towards Västerås, the port of discharge, we encountered bad weather. With strong winds and a heavy swell, it was a journey to remember. Well, maybe not such a memorable trip for the other crew members, but for an office employee it was definitely a bit more difficult than an ordinary day behind a desk. However, waking up the next morning to a sunny December day, it was easier to enjoy the beautiful views from the bridge.

”





Oscar Holmqvist, Credit Control Officer, Team Gothenburg Oscar signed on the M/V Nimbus.

# the seamen perform daily”

## Oscar Holmqvist

Credit Control Officer, Team Gothenburg

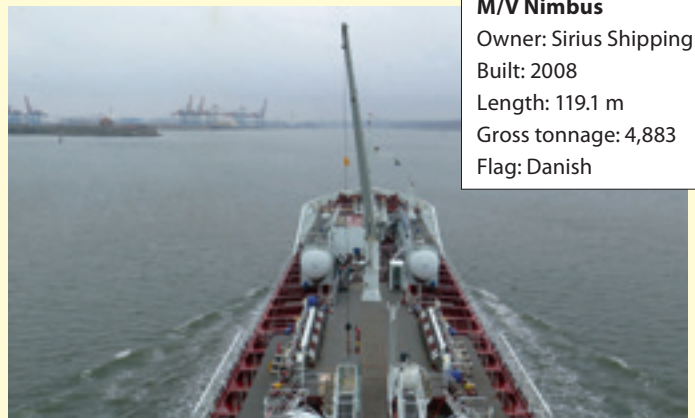
“ **I SIGNED** on the M/V Nimbus on 15 November 2014 and did not have to travel very far to sign on, since the vessel was located in Gothenburg, at Skarvikshamnen.

When I arrived at the Nimbus, the vessel was at the quayside carrying out discharging operations. About half a day later the vessel went out to the Rivö fjord where she was anchored for one day while the tanks were aired before once again heading back into the Port of Gothenburg for loading operations.

During the passage from Gothenburg to Norrköping, we also encountered bad weather, and the vessel had to round the south of Sweden in some “old sea”. The “old sea” meant that the wind and waves hit the vessel from different sides and I experienced the early stages of seasickness. Luckily the bad weather only lasted for a few hours.

### Our work on board

Further work on board consisted of shadowing different crew members to get a feel for the work that they did, e.g. attending the bridge during sea passage when the Captain and 1st officer were on duty to learn what their respective duties were during the different operations of the vessel and what their responsibilities concerned, e.g. for cargo operations, crisis situations on board etc. The Chief Engineer was followed on a tour of the engine room and the engineering apprentice and 2nd engineer were watched as they completed a welding project in the engine room’s workshop. We were both given a document with qualified questions designed to



### M/V Nimbus

Owner: Sirius Shipping  
Built: 2008  
Length: 119.1 m  
Gross tonnage: 4,883  
Flag: Danish

*The M/V Nimbus entering the port of Gothenburg, with the container terminal visible in the background on the port side.*

challenge our shipping knowledge and encourage us to find out the answers needed on board.

During our time on board we got to experience how discharge operations, tank cleaning and loading operations work.

### A great experience

Returning home after six days on board, we got back to the office with real sea legs and a load of impressions after this great experience. To get a chance to go on board and take part in the daily work of a commercial operating vessel is a great chance for learning more about the industry we spend all day working with. It has created a better understanding and made us more humble about the work the seamen perform daily.



[Read more ►](#)

## Project “Marinification” – sea training programme for office employees at The Swedish Club



**M/V Havila Foresight** is almost 100 meters long, with a deck area of over 1,000 m<sup>2</sup> and she is equipped with a DP2 system.

*Ludvig Nyhlén, Assistant Underwriter, Team Norway, joined the crew on the M/V Havila Foresight for three days.*

### Ludvig Nyhlén

Assistant Underwriter, Team Norway

“ **ALTHOUGH** I served in the Swedish Navy during my military service, I have a limited sea-going experience to gain from in my work in underwriting. In order to fully understand the members’ needs and the risks in their operations, I believe hands-on experience is very important.

Since The Swedish Club has recently entered the Energy and Offshore Supply segment in Norway, I was excited at the chance of joining the crew on the M/V Havila Foresight, a classic Platform Supply Vessel built by Havyard.

In October 2013, I was told to go to Mongstad off Bergen in Norway, where I would join the vessel and crew on the North Sea for three days to learn about their operations.

#### Day 1

When I got on board I joined the 2<sup>nd</sup> Officer on a tour of the vessel and received thorough security instructions. After the tour I found a good spot on the bridge and watched the crew skilfully manoeuvre the thrusters and azi-pods of the Havila Foresight as she left Mongstad offshore base and headed for the first rig to be supplied. Polar Pioneer, a semi-submersible located 300 meters above the seabed on the Troll offshore field.

We reached the Polar Pioneer at about 20:00 on Monday evening. Using the DP system the 2<sup>nd</sup> Officer safely moved the vessel closer and closer to the rig until there was about 15 meters between the vessel and the rig. Then the loading and offloading started and the entire operation was swiftly done in a few hours and then we were on our way to the next location.

Before I headed back to my cabin for some sleep, I joined the crew for a delicious dinner and had the opportunity to share some information on what their insurer could do for them.

#### Day 2

At 05:30 on Tuesday morning it was time to wake up as we arrived at Oseberg Sør (south), a fixed platform on a steel jacket, integrated with accommodation, drilling and production. At this point the wind speed had picked up significantly, and so had the wave height. The vessel didn’t seem to be affected much by the tougher conditions we encountered, and I was informed that less than 30% of the engine power was used to keep the vessel in place.

Cement and water were delivered to the rig and some containers were taken onboard. After discharging was completed, we headed for the Grane rig, another fixed platform located 185 kilometres west of the Norwegian shoreline. This was our third and final rig to supply during this voyage. This time barite, water and tools were to be discharged. After completion we headed back to Mongstad via Haugesund, a beautiful night trip through the Norwegian archipelago.

#### Day 3

The Havila Foresight was back securely moored at Mongstad offshore base around 07:30 on Wednesday morning. After three great days at sea, with a few hours of sleep and new experiences, I said goodbye to the crew and vessel and headed back for Oslo.

#### Back at the office

Experiencing life and work on the North Sea was both fascinating and educational. With my new insights I have a better understanding about the operations which is invaluable in my position as an assistant underwriter.

Finally, I want to send my best regards and a big thank you to the crew on board the Havila Foresight for taking the time to show me what life on board an offshore supply vessel is like.



# NEWS from ▶▶ Team Norway ▶▶ Team Asia

**THE END OF 2014** and beginning of 2015 has been an uphill struggle for the energy and offshore companies. With oil prices dropping as low as USD 45 per barrel and recently soaring into the USD 50-60 band, upcoming offshore projects have been delayed, newbuilding contracts cancelled or postponed and an even greater focus has been on cost-cutting and efficiency measures. North Sea PSV spot rates have dropped well below opex and a number of PSVs and AHTSs have been laid up. Although many of the lay ups have been for the winter season with its reduced weather window, the difference this year is that there are no contracts waiting in the months to follow.

A similar picture can be painted for the MOUs operating in the North Sea area. A number of rigs have been laid up for the winter season and the contract picture thereafter is somewhat strained, particularly in the short to medium-term perspective.

One of the recent broker consolidations in Scandinavia was the acquisition of Norway's Henschien Insurance Services by Italy's Cambiaso Risso Marine, which will hold the majority of shares with the minority balance being held by four of Henschien Insurance's senior management. Hans-Petter Henschien will continue to support this new venture throughout 2015.

Early this year, The Swedish Club Norway secured our first claims lead account in the energy portfolio, an important milestone for us in this segment. Another important milestone for doing energy business is an A-rating, which was awarded to The Swedish Club by A.M. Best, more or less at the same time. Regard-

**IN REVIEWING** the business development in the Asia region, we are proud of what we have achieved. Owners' P&I tonnage increased in the 2014/15 policy year by about two and half millions gross tons, about 15% when compared with the year before, and charterers' P&I business increased. Our book of hull business also increased considerably in terms of number of vessels insured with new addition of a couple of large well established fleets. Total premiums for the year also increased by well over 10%. We achieved all these increases even though our Chinese members scrapped a large number of older vessels encouraged by the Chinese government's incentive scheme, that was initiated due to the poor freight market. The Club has again announced very good results for 2014 and our business in Asia has made a good contribution.

Recent BDI figures that reflect the dry cargo freight market conditions dropped to well below 600 points, touching the lowest point in 30 years. Naturally many members are suffering from the very depressed freight market. Most of them are resilient and can survive this severe depression and will emerge from the hard cycle even stronger.

As a mutual insurance association we are here to support and serve our members. For our members this is currently more important than in the good times. In a recent case one of our member's vessels was arrested in a West African port relating to a large and complex dispute under a charterparty of a chartered in vessel that sank. The Club provided a letter of undertaking by way of security

## Team Norway

**Tore Forsmo**  
Area Manager



less of the troubled offshore and energy markets we have thus taken important steps to strengthen our position as a long-term, committed player.

P&I renewals have been relatively smooth sailing for Team Norway this year. This has been partly due to modest general increases and partly due to reinsurance reductions. Even though the number of P&I accounts remains stable, there's a small growth in the number of vessels.

We recently received approval as a branch office by both the Swedish and Norwegian Financial Supervisory Authorities. This means that Team Norway is now self-sufficient from both an underwriting, claims handling and administrative support viewpoint.

Team Norway is responsible for the Club's activities in Norway and Eastern Europe. In addition, the Team handles all the Club's energy, offshore service and construction risk lines. It is headed by Area Manager Tore Forsmo.

## Team Asia

**Ruizong Wang**  
Area Manager



at over USD 32 million to release the vessel from arrest. The arrest took place whilst the vessel was working on cargo. When the ship was released it had not completed the cargo operation. The member suffered no time loss. This example shows what the Club can do to support its members and protect their interests.

We have 15 people working at our Hong Kong office, 8 of them dedicated to providing claims services. Victor Bogesjö has returned to our head office in Sweden after six months secondment in Team Asia. Kristoffer Lindqvist will have worked in Hong Kong for 2 years in September and will then leave us for Sweden. We are in the process of recruiting replacements. We will ensure that we are ready to serve at all time.

Ruizong Wang is Managing Director and Area Manager for Team Asia, serving the Asian market through offices in Hong Kong, set up in 1982 and Tokyo, set up in 1998.



# NOTICE BOARD



PHOTO: Morguefile

## Increase in Court fees in England and Wales

**THE HOUSE OF LORDS** has approved a significant increase in Court fees relating to a large number of civil claims commenced in the English Courts. The increases are contained in The Civil Proceedings and Family Proceedings Fees (Amendment) Order 2015 and are effective from 9 March 2015.

Claims valued up to GBP 10,000 remain unaffected but for claims above GBP 10,000 the fee has now been increased to 5% of the claimed amount subject to a maximum of GBP 10,000. A claim for an unspecified amount will be subject to the maximum fee of GBP 10,000.

The increase in Court fees is made to ensure that the court system in England and Wales is properly funded. The increase has been heavily criticised as being at odds with the principle of proportionality, which has been a hot topic in English civil litigation for some years.

The increases are as follows:

Value of claim £	Fee now £ (paper)	New fee £	Increase in fee £	% increase
20,000	610	1,000	390	64%
40,000	610	2,000	1,390	228%
90,000	910	4,500	3,590	395%
150,000	1,315	7,500	6,185	470%
190,000	1,315	9,500	8,185	622%
200,000	1,515	10,000	8,725	576%
250,000	1,720	10,000	8,280	481%



PHOTO: Shutterstock

*Attempts have been made to transport sanctioned cargo from Iran by reloading it in the United Arab Emirate-harbour Khor Fakkan.*

## Iran Sanctions – STS operations of crude oil in Persian Gulf

**UNDER THE US SANCTIONS LAW**, transportation of Iranian crude oil is temporarily permitted only to the following so-called waiver countries: China, India, Japan, South Korea, Taiwan and Turkey (see Club's Member Alert of 28 November 2014).

In recent weeks, attempts have been made to dupe shipowners into transporting Iranian oil to non-US waiver countries by loading it at Khor Fakkan in the UAE. Shippers appear to be transporting the sanctioned cargo from Iran to Khor Fakkan using feeder ships and then, using falsified cargo documentation, by way of STS transfer to innocent vessels at Khor Fakkan. The documentation describes the cargo as having an origin other than Iran (so far Iraqi ports have been named) and may also misdescribe the shippers.

Members are therefore advised to exercise caution when engaging in STS operations in the Persian Gulf. In particular it is recommended that Members check with port agents to ensure that vessels providing cargo by means of an STS transfer in the region, loaded the cargo at the port stated in the cargo documentation before any cargo is received. It is also advisable to ensure that charter parties contain an appropriate sanctions clause.

Members are reminded that shipment of Iranian crude oil in breach of sanctions legislation will lead to an absence of insurance cover under P&I Rules 11:4 and 27(e). Such carriage is also likely to result in serious consequences for the Member.



## Wreck Removal Convention

**THE CONVENTION** came into force in State parties on 14 April 2015 and will provide a strict liability, compensation and compulsory insurance regime for States affected by a maritime casualty. It makes the registered owner of a ship liable for locating, marking and removing a wreck deemed to be a hazard in a State's Convention area.

Registered owners of ships of 300 gross tonnage and over registered in a State party, or entering or leaving a port in the territory of a State party, will need insurance cover arrangements which meet the requirements of the Convention and a certificate from a State party attesting that such insurance is in force. Such certificate must be carried on board at all times.

The Convention provides that for compulsory insurance purposes, liability under Certificates shall not exceed the limits calculated in accordance with the Convention on Limitation of Liability for Maritime Claims 1976 (LLMC 1976),



PHOTO: iStockphoto

as amended by the 1996 Protocol. The Convention also provides an exclusion from liability for acts of war (the definition of war does not include terrorism) and for damage wholly caused by the intentional act of a third party.



## New weight verification requirement for containers

**THE MARITIME SAFETY COMMITTEE** adopted new requirements in May 2014, regarding the verified gross mass of a container carrying cargo, and the SOLAS Convention was amended to require, as a condition for loading a packed container on a ship, that the container has a verified weight.

The SOLAS container weight verification requirement will come into force on 1 July 2016. The shipper is responsible for the verification of the packed container's weight. The SOLAS amendments provide that there are two methods shippers can use to determine the container weight.

Method 1, which requires weighing the container after it has been packed, or Method 2, which requires weighing all the cargo and contents of the container and adding those weights to the container's tare weight. Under either method, the weighing

equipment used must meet national certification and calibration requirements.

To comply with SOLAS requirements, the shipper's weight verification must be signed,

meaning a specific person representing the shipper is named and identified. The lack of a signed shipper weight verification can be remedied by weighing the packed container at the port. Vessel stowage plans should use verified weights for all packed containers loaded on board.



PHOTO: Stefan Eliasson



## IMO launches statistics over stowaways

**THE INTERNATIONAL MARITIME ORGANIZATION** has published statistics of stowaway incidents in 2014. In total, there were 61 incidents reported involving 120 stowaways. Cape Town and Lagos were the most common ports of embarkment. Africa is responsible for 81% of the total cases and the most common type of known stowaway nationalities were Nigerian, Ghanaian and Tanzanian.

According to the Club's statistics, the average cost of a stowaway case is USD 38,500 although the costs for one case can escalate to several hundreds of thousands of dollars depending on the legal and practical difficulties of repatriating the stowaway involving, inter alia, teams of security staff.







*Martin Hernqvist, Managing Director of The Swedish Club Academy, presented the MRM programme.*

## Encouraging participation at the annual Breakfast seminar in Oslo

**THIS YEAR** Team Norway held its annual Breakfast seminar at Tjuvholmen Sjømagasin in Oslo. The good participation from the market was encouraging, with most of our local business partners represented.

The topic for this year's event, apart from a short update about the result and status of both the Club and the Team, was the Maritime Resource Management program.

Martin Hernqvist, the Managing Director of The Swedish Club Academy, presented the MRM program and its potential.



*We had a pleasant breakfast and seminar, and wish to thank all the participants for their involvement.*





From left : John Su, Erasmus Shipinvest B.V. and Lars Rhodin, The Swedish Club.



From left: Fred Cheng, Shinyo International Group Ltd, Tokyo, Lars Höglund, Furetank Rederi AB, Sweden both members of The Swedish Club board and Peter Cowling, Chairman of the Club's Election Committee.



From left: Ruizong Wang, The Swedish Club Hong Kong, Mr Li Hua of Sinotrans Ship Management Ltd. and Mr & Mrs Steven Liu of Golden Management Co. Ltd.

## A well attended reception in Hong Kong

**OVER 150** of our members, brokers and business partners (many of them from overseas) attended the Cocktail reception at the Four Seasons Hotel in Hong Kong. The reception was held after The Swedish Club's quarterly Board meeting in March this year.



From left: Mr Alan Yu of A. Yu & Associates Risks Solutions Ltd. and Mr Lawrence Lau of Cosco (Hong Kong) Insurance Brokers Ltd.



From left: Ms Shrah Ng, Ms Michelle Tsang and Mr C. C. Young of Teh-Hu Cargocean Management Co. Ltd.





## Midsummer's Eve – celebrating the longest day of the year

**While dancing with the fairies on a dew scattered meadow, you should pick seven flowers and put them under your pillow to dream of your future spouse – this is how a Midsummer's Eve should be concluded according to Swedish folklore. So why turn to internet dating services, when you can come to Sweden to celebrate our most beloved festival and find your wife or husband at the same time?**

Midsummer occurs at summer solstice at the end of June. This is a time when the Swedes gather family and friends, leave the city to preferably go to a summer cottage in the country side to stay up and outdoors all night no matter what the weather. We start with a lunch buffet of herring, new potatoes, strawberries and of course the famous schnapps. And when everybody is satisfied, it's time to make garlands of flowers to put in your hair and dance around the Midsummer pole.

This tradition with a pole originated in German middle ages. It was called a maypole and erected on 1 May, but as the trees hadn't sprouted leaves by this time in Swe-

den, we moved the tradition to June – and Midsummer was created!

### A night of magic...

The border between the human world and the supernatural world is less than usual and stories show us that fantastic things can happen on this night. According to folklore, Midsummer's Eve is not only a night of love, it is also a night of magic, where the force of nature is flowing and medicinal plants are believed to be more potent. By taking care of and drying them, you could store powers for hard times. For example a dried Midsummer garland can be used during your winter bath to strengthen your body. You can also save the dew from this night to use as medicine, or walk barefoot or roll around in the dew to stay healthy for the rest of the year.

### ...and treasure hunting

Midsummer's Eve is also a time for treasure hunting. Due to folklore it was said that spellbound treasures rose out of earth for one night and became reachable for humans. If you could stay totally quiet, you had a chance of catching them, if not, they would disappear forever.



**Carola Weidenholm**  
Corporate  
Communications

Prophecies and foretold were common in early Swedish rustic society and all big celebratory festivals during the year were seen as opportunities for predicting the future, however, Midsummer is most of all the season of love.

### More ways of finding love during Midsummer

- ☀ Eat a salted herring tail first and then go to bed without drinking anything. In your dreams your future spouse will appear and offer you something to drink.
- ☀ Jump seven fences and you will meet your future spouse
- ☀ Walk naked nine times around a spring or well and you will see the face of your future spouse on the surface of the water
- ☀ If you want to regain your virginity, you can try walking backwards around a well.



# Staff News

## TEAM GOTHENBURG



### Caroline Friis

*Assistant Claims Executive, Marine*

Caroline joined Team Gothenburg on 7 January 2015 on a one-year traineeship. She holds a BSc (Hons) in Maritime Business and Maritime Laws from Plymouth University. She has also concluded a Master of Law in Oslo and a Graduate Diploma in Law from Oxford Brookes University.

# Club Calendar 2015

<b>4-8 May</b>	Marine Insurance Course	Gothenburg
<b>19 May</b>	Club Evening	Hamburg
<b>20 May</b>	Club Evening	Bremen
<b>10-12 June</b>	AGM Events	Gothenburg
<b>10 June</b>	Board Meeting	Gothenburg
<b>11 June</b>	Annual General Meeting	Gothenburg
<b>1 October</b>	Board Meeting	Athens
<b>3 December</b>	Board Meeting	London

For further upcoming events, please refer to [www.swedishclub.com/ClubCalendar](http://www.swedishclub.com/ClubCalendar)

## The Swedish Club AGM and events, 10-12 June 2015

Our 143<sup>rd</sup> Annual General Meeting will be an event to look forward to with international expert speakers, seminars and professional networking opportunities.



*From the Annual General Meeting 2014.*

*Dr Jonas Ridderstråle, one of this year's keynote speakers.*



### 1 When

was the first official transit of the Panama Canal made?

- 1 1914
- X 1918
- 2 1925

### 2 What

is the required temperature for shipment of bananas?

- 1 9,50 C
- X 13,50 C
- 2 15,50 C

### 3 When

did The Swedish Club establish an office in Piraeus?

- 1 1975
- X 1980
- 2 1985

Mail your answer to [quiz@swedishclub.com](mailto:quiz@swedishclub.com)

The first right answer will be awarded a Club give-away.

### Winner of Club Quiz 3-2014



Winner of Club Quiz in Triton No 3-2014 was Stratos Vafeiadis, Grecomar Shipping, Athens who has been awarded a Club giveaway.

The right answers to Club Quiz No 3-2014 are:

- X Gossip
- X Acronym for "Port Outbound Starboard Home"
- 1 2010





**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 FPSO's.

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